12-423

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1881.

No. ~~397~~ 85

CHARLES A. RICHARDSON, APPELLANT,

vs.

HENRY J. TRAVER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 13, 1881.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 397.

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vs.

HENRY J. TRAVER.

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1 Pleas in the Circuit Court of the United States of America for the Northern District of Illinois, in Chancery sitting, begun and held at the United States Court rooms in the city of Chicago, in the District aforesaid, before the Honorable Thomas Drummond, Circuit Judge of the United States for the Seventh Judicial Circuit, at Chicago, in said District, on Tuesday, the eleventh day of January, in the year of our Lord one thousand eight hundred eighty-one, and of our Independence the one hundred and fifth year. William H. Bradley, clerk.

CHARLES A. RICHARDSON *vs.* HENRY J. TRAVER, CLARISSA S. TRAVER, Michael Traver, Mary Jane Traver, Enos Ayres, Henry L. Hammond, L. C. Paine Freer, Alvin Hulbert, Gwynn Garnett, John Borden, William Borden, Michael Weidinger, Nathaniel S. Goss, James C. Hyde, Mary A. Pearson, Caroline E. Jones, Mary E. Bruce, Oswell A. Bogue, Hugh A. White, John Baldwin, Jr., Lockhart R. Carswell, Frederick A. 2 Weage, Peter K. Dederich, Aaron M. Dederich, Philip W. Dederich, and Samuel A. Sawyer.	13171. In Chancery. Bill to Foreclose Mortgage.

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NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on this day, to wit, the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and seventy-five, came Charles A. Richardson, complainant in this suit, by F. C. Ingalls, his solicitor, and filed in the office of the clerk of the circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, his bond for costs and bill of complaint in said entitled cause, which said bond for costs and bill of complaint are in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA, *Northern District of Illinois*, } ss:

Circuit Court. February Term, A. D. 1876.

3 CHARLES A. RICHARDSON *vs.* HENRY J. TRAVER *et al.* } In Chancery.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against our property for any costs taxed against him. Dated this 28th day of December, A. D. 1875.

HAMMOND & BOGUE.

(Endorsed:) Filed Dec. 28th, A. D. 1875. Wm. H. Bradley, clerk.

Bill of Complaint.

UNITED STATES OF AMERICA, *Northern District of Illinois*, } ss:

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

To the honorable judges of the circuit court of the United States for the said district, sitting in chancery.

Charles A. Richardson, of the city of Boston, a resident and citizen of the State of Massachusetts, brings this his bill of complaint against Henry J. Traver, Clarissa S. Traver, Michael Traver,
4 Mary Jane Traver, Enos Ayers, Henry L. Hammond, L. C. Paine Freer, Alvin Hulbert, Gwynn Garnett, John Borden, William Borden, Michael Weidinger, Nathaniel S. Goss, James C. Hyde, Mary A. Pearson, Caroline E. Jones, Mary E. Bruce, Oswell A. Bogue, Hugh A. White, John Baldwin, Jr., Lockhart R. Carswell, & Frederick A. Weage, who are residents and citizens of the State of Illinois and the district aforesaid.

And thereupon your orator complains and says that on or about the nineteenth day of December, in the year of our Lord one thousand eight hundred and seventy, the said Henry J. Traver and Michael Traver became indebted to one John Dickson in the sum of twenty-one thousand four hundred and ninety-four and $\frac{70}{100}$ dollars; the said Henry J. and Michael Traver then being and since remaining residents and citizens of the State of Illinois and district aforesaid, and the said John Dickson then being and since remaining a resident of Cincinnati and a citizen of the State of Ohio. And being so indebted the said Henry J. Traver and Michael Traver, on the day and year last aforesaid, at Chicago, in the district aforesaid, made, executed, and delivered to the said John Dickson their four

certain promissory notes, each being for the sum of five thousand three hundred and seventy-three and 67½-100 dollars, payable to the order of said John Dickson, at the office of Ayers & Eoff, in Chicago, Illinois, with interest at the rate of eight per cent. per annum, payable semi-annually, and with interest at the rate of ten per cent per annum after the maturity of said notes respectively, one of said notes being due and payable in two years after the date thereof, one being payable in three years after date thereof, one being payable in four years after the date thereof, and the other being payable in five years after the date thereof.

And in order to better secure the payment of said several notes with the interest thereon, according to the tenor and effect thereof, the said Henry J. Traver, together with the said Clarissa S. Traver, his wife, and the said Michael Traver, together with Mary Jane Traver, his wife, on the said nineteenth day of December, A. D. 1870, did execute, acknowledge, and deliver to the said Enos Ayres, as trustee, a certain deed of trust, bearing date on the day and year last aforesaid, whereby they did grant, bargain, sell, and convey, in fee-simple, to the said Enos Ayres, his heirs and assigns or successors, in trust, all the following described lands and premises, lying and situate in the city of Chicago, county of Cook, and State of Illinois, to wit: All of that part of the west half of the southeast quarter of section twenty-three (23), in township thirty-nine (39) north, of range thirteen (13) east, of the third principal meridian, which lies south of the southwestern plank road (or Ogden avenue, so-called), except the west fifteen acres, and except the east ten acres, and except also the right of way of the Chicago, Burlington and Quincy Railroad, said tract containing fifteen and nine hundred and twenty-two thousandths ($15\frac{9\,2\,2}{1\,0\,0\,0}$) acres, more or less, measuring to the centre of the streets and avenues on either side, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, in trust; that in case default should be made in the payment of either of the indebtednesses mentioned in said notes and secured by said trust deed, whether for principal or interest, on the day on which the same or either of them should become due and payable, then to sell and dispose of the said premises, and all the right, title, benefit, and equity of redemption of the grantors in said deed, their heirs or assigns therein, at public auction, at the north door of the court-house in the city of Chicago, in the State of Illinois, or on said premises, as might be specified in the notice of such sale, by advertisement in one of the newspapers at that time published in said city of Chicago, and to make, execute and deliver to the purchaser or purchasers at such sale, good and sufficient deed or deeds of conveyance for the premises sold and out of the proceeds or avails of such sale, and the purchase money paid thereon, after first paying all costs of such advertising and sale, including commissions at the rate of two and one-half per cent., and all other expenses of said trust, including all moneys advanced for insurance, taxes, and assessments, or other liens, with the interest thereon, to pay the principal of said notes, whether due and payable

by the terms thereof or not, and the interest due on said notes up to the time of such sale, rendering the overplus, if any, unto the said grantors in said deed, their legal representatives or assigns, on reasonable request; and the said grantors did therein covenant and agree that in case default should be made in the payment of any or either of the indebtednesses or moneys aforesaid, whether for principal or interest or of the taxes hereinafter mentioned on the day on which the same, or either of them, should become due and payable, then all and each of the moneys secured to be paid by said trust deed should, upon such default, become immediately due and payable; and the said grantors, in and by said deed, did expressly waive and release any and all rights in respect of the said land to them secured by the statutes of the State of Illinois relating to the alienation and exemption of homesteads.

8 And the said Henry J. Traver and Michael Traver did, in and by said deed, covenant and agree with said grantee that at the time of the delivery of said deed they were well seized of said premises in fee-simple, and had good right, power, and lawful authority to grant, bargain, sell, and convey the same in manner and form as aforesaid; that the same were free and clear of all liens and incumbrances whatsoever; that the said grantors would in due season pay all taxes and assessments on said premises until the aforesaid indebtedness should be fully paid; and, in case of the death, inability, or refusal to act of said grantee, Enos Ayres, then said Hugh A. White, of Chicago, aforesaid, should be, and was by said deed, appointed and made successor in trust to the said Enos Ayres under said deed, with like powers and authority, and the said premises thereupon to become vested in such successon in trust for the uses and purposes aforesaid, which said deed of trust was afterwards, on the nineteenth day of May, A. D. 1871, duly recorded in the recorder's office of Cook county, in the State of Illinois, in Book 655 of Deeds, at page 517.

9 And your orator further shows unto your honors that the first two of the notes aforesaid, that is to say, those two notes due respectively in two and three years after the date thereof, were paid and discharged in full while in the hands of the said John Dickson.

And your orator further shows, that afterwards, and on or about the fifteenth day of January, A. D. 1875, your orator, for a good and valuable consideration, purchased from the said John Dickson the two notes aforesaid, payable, respectively, in four years and five years after date thereof. And the said John Dickson assigned and, under his hand, duly endorsed said notes, and delivered the said notes (last mentioned) so endorsed to your orator on or about the day and year last aforesaid, and before said note, due in December, 1875, had become due or payable. And your orator thereby then and there became the legal and equitable owner and holder of said notes, and still remains such owner and holder. And your orator further shows, that the principal of the said two notes so owned by your orator remains wholly unpaid, and no interest has been paid thereon since December 19, 1874, and that there is

now justly and equitably due to your orator from said Henry J. Traver and Michael Traver on the said two notes and deed of trust the sum of ten thousand seven hundred and forty-seven and $\frac{35}{100}$ dollars, together with interest on $5,373.67\frac{1}{2}$-100 at eight per cent. from December 19, 1874, to December 19, 1875, and with interest at ten per cent. on $5,373.67\frac{1}{2}$-100 from December 19, 1874,
10 and with interest on the whole sum at ten per cent. per annum from and since the nineteenth day of December, A. D 1875.

Your orator further shows, that after the execution and delivery of the notes and deed of trust hereinbefore mentioned, and on or about the 25th day of April, A. D. 1872, the said Henry J. Traver and Michael Traver caused the land above described to be subdivided into the three blocks, with streets and alleys, which blocks are numbered respectively 1, 2, and 3, said block 1 containing forty-three lots, said block 2 containing forty-eight lots, and said block 3 containing forty-four lots, and on or about the sixth day of May, A. D. 1872, caused a map or plat of such subdivision, duly acknowledged by them, to be recorded in the recorder's office of said county of Cook, in Book 1 of Maps, page 59.

Your orator further shows that afterwards, and on or about the second day of September, A. D. 1872, the said Henry J. Traver and wife and said Michael Traver and wife conveyed by warranty deed lots number ten (10) to thirty-nine (39), both inclusive, in block two (2) of said Traver's subdivision to one Charles M. Earl, and that said Earl and his wife afterwards, on or about the 28th day of December, A. D. 1872, conveyed by warranty deed the said lots of land last described to James C. Hyde. That on or about the fifth
11 day of September, A. D. 1872, the said Michael Traver and Mary Jane, his wife, conveyed by quit-claim deed to said Henry J. Traver all of said block 1 in said Traver's subdivision, and that on or about the 20th day of December, A. D. 1872, the said Henry J. Traver and wife did deed and convey to said Michael Traver lots number 1 to 9, both inclusive, and lots 40 to 48, both inclusive, in said block 2 of Traver's said subdivision, and that said Michael and wife, on or about the 28th day of the same month, conveyed said lots last described by warranty deed to said James C. Hyde.

Your orator further shows that afterwards, and before the said notes due, respectively in 1874 and 1875, were purchased by your orator, and while said notes were owned by said John Dickson, the said Enos Ayres, together with the said Dickson, executed a deed or release to said Henry J. Traver and Michael Traver of that part or portion of said premises mentioned in said deed of trust, described as block three (3) in Traver's subdivision of that part of the west half of the southeast quarter of section twenty-three (23), township thirty-nine (39) north, range thirteen (13) east of the third principal meridian, which lies south of the southwestern plank road, (or Ogden avenue), except the west fifteen acres and the east ten acres, and except the right of way of the Chi-
12 cago, Burlington and Quincy Railroad, according to the plat

of said subdivision, recorded in the recorder's office of said Cook county, in Book 1 of Maps, page 59.

Your orator further shows that afterwards, on or about the nineteenth day of February, A. D. 1875, the said Enos Ayres, trustee, executed a release to said Henry J. and Michael Traver of that portion of said premises mentioned in said deed of trust, described as block two (2) in said Traver's said subdivision; but your orator avers that the said Henry J. Travers disputes the validity of said release, and claims that the same ought not to be deemed a good release in equity, and that the lien of the trust deed to secure the notes owned by your orator as aforesaid ought to be deemed in equity to attach as well to said block two as to said block one.

And your orator furthes shows that Henry L. Hammond, L. C. Paine Freer, Alvin Hulbert, Gwynn Garnett, John Borden, William Borden, Michael Weidinger, Nathaniel S. Goss, James C. Hyde, Mary A. Pearson, Caroline E. Jones, Mary E. Bruce, Oswell A. Bogue, John Baldwin, Jr., Lockhart R. Carswell, Frederick A. Weage, have, or claim to have, some intesest in the lands and premises aforesaid, or in some parcels thereof, but your orator avers that their interests and the respective interests of each of them, if any they have, were acquired subsequently, and are
13 subordinate to the lien of the deed of trust aforesaid, which was made to secure the said two notes now owned by your orator as hereinbefore stated.

In consideration whereof, and for as much as your orator is remediless at common law and can only have relief in a court of equity.

To the end, therefore, that the said defendants and each of them hereafter named may answer this your orators bill of complaint without oath, their oaths, and each of them, being hereby expressly waived, and that they may show cause, if any they have, why the relief hereby sought by your orator should not be granted.

And that your orator may have the usual decree of foreclosure against the land described in said deed of trust, or such part thereof as has not been released; that an account may be taken of the amount due to your orator for principal and interest on the notes and deed of trust aforesaid, and that in default of the payment thereof within some reasonable day to be fixed by this honorable court, that said land may be sold by the order and decree of this honorable court, and the said defendants and each of them be barred and foreclosed of all benefit and equity of redemption therein, and that out of the proceeds of such sale the said
14 amount which shall be so found to be due to your orator may be satisfied and discharged.

And that your orator may have such further relief, or such other relief, as the nature of this case may require and as shall be agreeable to equity.

May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, to be directed to the said defendants, Henry J. Traver, Clarissa S. Traver, Michael Traver, Mary Jane Traver, Enos Ayers, Henry L.

Hammond, L. C. Paine Freer, Alvin Hulbert, Gwynn Garnett, John Borden, William Borden, Michael Weidinger, Nathaniel L. Goss, James C. Hyde, Mary A. Pearson, Caroline E. Jones, Mary E. Bruce, Oswell A. Bogue, Hugh A. White, John Baldwin, Jr., Lockhart R. Carswell, and Frederick A. Weage, thereby commanding them, and each of them, at a certain day and under a certain penalty, personally to be and appear before your honors in this honorable court, then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree herein as your honors shall seem meet.

And your orator will ever pray.

CHARLES A. RICHARDSON.

FRED'R. C. INGALLS,
Sol'r and of Counsel for Complainant.

(Endorsed:) Filed Dec. 28, 1875. Wm. H. Bradley, clerk.

15 And on that same day, to wit, the twenty-eighth day of December, A. D. 1875, a writ of subpœna issued out of said clerk's office against the defendants in said entitled cause, which said writ, together with the memorandum thereto attached, and the marshal's return thereon endorsed, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

The United States of America to Henry J. Traver, Clarissa S. Traver, Michael Traver, Mary Jane Traver, Enos Ayres, Henry L. Hammond, L. C. Paine Freer, Alvin Hulbert, Gwynn Garnett, John Borden, William Borden, Michael Weidinger, Nathaniel S. Goss, James C. Hyde, Mary A. Pearson, Caroline E. Jones, Mary E. Bruce, Oswell A. Bogue, Hugh A. White, John Baldwin, Jr., Lockhart R. Carswell, and Frederick A. Weage, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of February next, to answer the bill of complaint of Charles A. Richardson, this day filed in the clerk's office of said court in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you
16 by default to the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 28th day of December, in the year of our Lord one thousand eight hundred and seventy-five, and of our independence the 100th.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within writ within my district in the following manner, to wit: Upon Henry J. Traver, therein named, on the 29th day of December, A. D. 1876; also upon Michael Traver, therein named, on the 29th day of December, A. D. 1876, by personally delivering to each of them a true copy of the same on the aforesaid days.

I did not serve, by order pl'ffs att'y, the other defendants.

B. H. CAMPBELL, *U. S. Marshal.*
By L. O. GILMAN, *Deputy.*

17 (Endorsed:) Filed March 6, A. D. 1876. Wm. H. Bradley, clerk.

Afterward, to wit, on the eleventh day of March, A. D. 1876, came Henry J. Traver, Clarissa S. Traver, Michael Traver, and Mary Jane Traver, by their solicitors, who enter their appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for said District, of the March Term, A. D. 1876.

CHARLES A. RICHARDSON
vs.
HENRY J. TRAVER, CLARISSA S. TRAVER, MICHAEL TRAVER, MARY JANE TRAVER, and others. } In Chancery.

And now come the said defendants, Henry J. Traver, Clarissa S. Traver, Michael Traver, Mary Jane Traver, by McCoy & Pratt, their solicitors, and enter their appearance in said cause, and ask that they may be allowed further time to demur to or answer the said bill.

HENRY J. TRAVER,
CLARISSA S. TRAVER,
MICHAEL TRAVER,
MARY JANE TRAVER.
Defendants.

By McCOY & PRATT,
Their Solicitors.

18 (Endorsed:) Filed March 11, 1876. W. H. Bradley, cl'k.

Afterwards, to wit, on the thirty-first day of March, A. D. 1876, came Lockhart R. Carswell, Henry L. Hammond, Oswell A. Bogue, Hugh A. White, James C. Hyde, L. C. Paine Freer, F. A. Weage, Michael Weidinger, John Baldwin, Jr., John Borden, William Borden, and Alvin Heulbert, and entered their appearances in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

CHARLES A. RICHARDSON
vs.
HENRY J. TRAVER, CLARISSA S. TRAVER, MICHAEL TRAVER, MARY Jane Traver, Enos Ayres, Henry L. Hammond, L. C. Paine Freer, Alvin Hulbert, Gwynn Garnett, John Borden, William Borden, Michael Weidinger, Nathaniel S. Goss, James C. Hyde, Mary A. Pearson, Caroline E. Jones, Mary E. Bruce, Oswell A. Bogue, Hugh A. White, John Baldwin, Jr., Lockhart R. Carswell, and Frederick A. Weage.

We, and each of us, defendants in the above-entitled cause, do hereby acknowledge due services of process or subpœna in chancery in the above cause upon us, on this eleventh day of February,
19 A. D. 1876, and authorize said court to enter our default in said cause, in case no appearance is entered or answer filed on or before the first Monday of March, A. D. 1876.

LOCKHART R. CARSWELL.
HENRY L. HAMMOND.
OSWELL A. BOGUE.
HUGH A. WHITE—Appearance upon consideration judgment shall herein against me for costs.

JAMES C. HYDE.
L. C. PAINE FREER—Appearance entered in consideration that no judgment shall be entered herein against me for costs.

F. A. WEAGE—Appearance entered in consideration that no judgment shall be entered herein against me for costs.

MICHAEL WEIDENGER—Appearance entered in consideration that no judgment shall be entered herein against me for costs.

JOHN BALDWIN, Jr.—Appearance entered in consideration that no judgment shall be entered herein against me for costs.

CHICAGO, *March* 17, 1876.

I hereby enter the appearance of defendants John Borden & William Borden for April term, A. D. 1876, U. S. cir. c't.

JOHN BORDEN,
Sol'r for Self & Wm. Borden.

20 ALVIN HULBERT—Appearance entered in consideration that no judgment shall be entered herein against me for cost.

(Endorsed:) Filed March 31, 1876. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the fifth day of April, A. D. 1876, came L. C. Paine Freer, John Borden, and William Borden, by their solicitor, and filed in said clerk's office their answer to the bill of complaint in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

The joint and several answers of L. C. Paine Freer, John Borden, and William Borden, three of the defendants to the bill of complaint of Charles A. Richardson, complain't.

These defendants, now and at all times hereafter saving to themselves all and all manner of benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally

21 answering, say, on information and belief, that on or about the 19th day of December, A. D. 1870, the said Henry J. Traver and Michael Traver, with their wives, made, acknowledged, and delivered their certain trust deed of that date therein, conveying to Enos Ayres, as trustee therein, the tract of $15\frac{82.2}{100}$ acres, more or less, in section 23, in township 39 north, range thirteen (13) east of the third principal meridian, described in the bill, in trust to secure four notes in the amounts as in the bill stated, (but as appears from the abstract,) payable respectively 1, 2, 3, & 4 years after date, with interest at the rate of 8 per cent. per annum, payable semi-annually; that afterwards said Henry J. Traver and Michael Traver made subdivision of said tract into three blocks, with streets and alleys, block 1 containing 43 lots, block 2 containing 48 lots, & block 3 containing 44 lots, the map of which subdivision, entitled Traver's subdivision of said tract, was acknowledged by them on or about the 25th day of April, A. D. 1872, and recorded in the recorder's office of Cook county, on the sixth day of May, A. D. 1872; that afterwards, and on or about the eighth day of February, A. D. 1873, the said trustee, Enos Ayres, and said John Dickson, the holder of the indebtedness secured by said Ayres' trust deed by their

deed of release of that date, recorded in said recorder's office on the 14th day of February, A. D. 1873, conveyed and released to the said Henry J. Traver & Michael Traver all right, title, and interest
22 acquired by said trust deed in and to block three (3), in said Traver's subdivision of said tract of land; that afterwards and on or about the 29th day of January, A. D. 1875, the said trustee, Enos Ayres, with one Oswell A. Bogue, then the legal holder of the unpaid amount secured by said trust deed, by their deed of release of that date, and recorded in said recorder's office on the 19th day of February, A. D. 1875, conveyed and released to said Henry J. Traver and Michael Traver all interest acquired by said trust deed in block two in said subdivision; that on or about the second day of September, A. D. 1872, the said Henry J. Traver and Michael Traver, by their deed of that date, commonly called a general warranty deed, in which their wives duly joined, and which was recorded in said recorder's office on the twelfth day of September, A. D. 1872, sold and conveyed to one Charles M. Earl, in fee-simple, lots thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36), (with other lots), in block two (2) in said subdivision, and that thereafter and on or about the 28th day of December, A. D. 1872, the said Charles M. Earl and wife, by their deed of that date, commonly called a general warranty deed, recorded in said recorder's office on the 7th day of January, A. D. 1873, sold and conveyed the above lots in said block two (2) to said James C. Hyde; that afterwards one
23 Mary Ann Pearson and John Pearson, having acquired title in fee-simple to said lots thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36), in said block 2, by purchase and conveyance thereof, from or under said James C. Hyde, on or about the fourth day of November A. D. 1873, by their certain trust deed of that date, by them duly executed and acknowledged, and thereafter and about the same time recorded in said recorder's office, conveyed said last named four lots in fee simple to one Thomas D. Snyder, the trustee therein named, with said L. C. Paine Freer named as successor, in trust therein to secure the certain indebtedness in said trust deed mentioned, of the sum of fifteen hundred dollars, and evidenced by the certain promissory note of the said Mary Ann and John Pearson, of even date with said last named trust deed, and drawn payable to the order of said James C. Hyde, five years thereafter, with interest at the rate of eight per cent. per annum, payable half yearly, which note some short time after the making and delivery thereof, and of said trust deed securing the same by endorsement, transfer, and delivery thereof, and in due course of business and for value, came into the hands of one Philip W. Dederick, of Albany, in the State of New York, who is now the *bona fide* owner and holder of the same; than on or about the second day of November, A. D. 1874, the said James C. Hyde, then the owner of said lots thirty (30), thirty-one (31), and thirty-two (32),
24 in said block two (2) by his certain trust deed of that date, and recorded in said recorder's office on the 27th day of November, A. D. 1874, conveyed said last-named three lots in fee

simple to said John Borden and William Borden, as trustees therein in trust, to secure the certain promissory note of the said James C. Hyde, of even date, with said trust deed, and drawn payable to the order of said P. W. Dederick one year after its date, with interest, until paid, at the rate of ten per cent. per annum, payable semi-annually, which note, some time after the making & delivery thereof, & before maturity by endorsement & transfer thereof, & for value, came to the hands of one Aaron M. Dederick, who is now the owner & holder thereof, & which note still remains unpaid; that on or about the 22d day of July, A. D. 1872, the said Henry J. Traver and Michael Traver, (their wives joining with them therein), by their general warranty deed of that date, recorded in said recorder's office on the 8th day of August, A. D. 1872, conveyed in fee simple lots thirty-seven (37), thirty-eight (38), and thirty-nine (39), in block three (3), in said subdivision, to one William C. Gibson, who thereafter, & on or about the 28th day of March, A. D. 1873, by deed, about that time recorded in said recorder's office, conveyed the same in fee simple to one William McKim, who afterwards, and on or about the ninth day of
25 April, A. D. 1873, by deed of that date, & about the same time recorded in said recorder's office, conveyed the same in fee simple to said James C. Hyde, who, on or about the fourth day of of October, A. D. 1873, by his certain trust deed of that date, recorded in said recorder's office on October 15th, 1873, conveyed said last-named three lots in fee simple to said S. C. Paine Freer, as trustee therein in trust, to secure the promissory note of said James C. Hyde, of even date, with said trust deed, drawn payable to the order of said P. W. Dederick, in the sum of two thousand, dollars, three years after the date thereof, with interest thereon at the rate of ten per cent. per annum, payable half yearly, which said note is now held & owned by the said P. W. Dederick, and remains unpaid; also, that by conveyance from and under the said Henry J. Traver and Michael Traver, one Garret Garretson became the owner in fee simple of lots forty-two (42) and forty-three (43), in block (3), in said subdivision, and being such owner he, on or about the first day of October, A. D. 1873, by his certain trust deed of that date, & about the same time recorded in said recorder's office, conveyed said last-named two lots in fee simple to said Thomas D. Snyder, with said Jone Borden, as successor in trust therein, in trust, to secure the certain promissory note of said Garretson, of even date with said trust deed, drawn payable to the order of
26 said James C. Hyde, for the sum of two thousand dollars, and payable three years after date, with interest at the rate of nine per cent. per annum, payable half yearly, which last-named note, shortly after the making thereof, by endorsement and transfer of the same for value, came to the hands of said P. W. Dederick, who is now the *bona fide* holder and owner of the same; also, that the said lots above described and being in said block two and three, respectively, were under and by virtue of releases made and executed by the said Enos Ayres wholly freed and discharged from the lien and incumbrance of the aforesaid trust deed, made to him by

the said Henry J. Traver & Michael Traver; that the several persons, as aforesaid, acquiring title & an interest in said lots, are entitled to the benfit of the aforesaid releases of the said Aryes' trust deed, & to hold said lots wholly freed & discharged therefrom; that these defendants, as trustees as aforesaid, acquired their interest in said lots, as aforesaid, without any notice or knowledge that the said releases of the said Ayres' trust deed, or either of them, were in any respect whatever invalid, & that the holders of the said paper above referred to, to wit, the said Dedericks, respectively, purchased the same *bona fide* & for value, & relying upon the aforesaid releases of the said Ayres' trust deed, respectively, & upon the validity
27 of the same, and these defendants, severally, say that the said bill is defective for want of parties defendant, to wit, those interested in said blocks two (2) & three (3), & each of them, by title acquired from & under the said Travers, after the making of the said Ayres' trust deed, & before the filing of the said bill, & that these defendants are parties having no beneficial interest in the matters in controversy, & stand as mere trustees to secure indebtedness, as above mentioned, & that the said Philip W. Dederick & Aaron M. Dederick, as owners & holders of the paper, evidencing the same, should be parties defendants to said bill as the real parties in interest in the said matter, and these defendants crave the same benefit of the said objection as if the same had been duly interposed to said bill by demurrer or plea thereto for that cause. And these defendants further, severally, say that if there be any other portion of said premises against which the said Ayres' trust deed is by the said bill sought to be forclosed, & of which trust deed or trust deeds have at any time been made to them, or either of them, and which might well happen without their knowledge, or be within their present recollection, that in respect of all such parcels, as well as those hereinbefore specifically mentioned, they severally & jointly allege & insist that the said releases of said Ayres' trust deed were, & and each of them was, good & valid,
28 & that all persons concerned acted in good faith, relying upon the same & the record thereof, & that the said releases are good and valid as to them, and especially as to these defendants, and all others whom they or either of them may represent as trustees or trustee under trust deed or deeds made to them, or otherwise, and these defendants deny all combination & confederacy wherewith they are by said bill charged without this, that there is any other matter, cause, or thing in said bill contained material or necessary for this defendant to make answer unto, & not herein & hereby well & sufficiently answered, confessed, traversed, avoided or denied is true to the knowledged or belief of these defendants, all which matters & things they are ready to aver, maintain, & prove as this honorable court shall direct, & humbly pray to be hence dismissed with their reasonable costs & charges in this behalf most wrongfully sustained.

JOHN BORDEN.
WM. BORDEN.
S. C. PAINE FREER.

JOHN BORDEN, *of Counsel.*

(Endorsed:) Filed April 5, 1876.

WM. H. BRADLEY, *Clk.*

Afterward, to wit, on the tenth day of April, A. D. 1877, in the record of the proceedings of said court in said entitled cause before the Honorable Henry W. Blodgett, district judge, appears the following entry, to wit:

29 CHARLES A. RICHARDSON *vs.* HENRY J. TRAVER *et al.* } In Chancery.

On motion of complainant, by F. C. Ingalls, Esq., his solicitor, leave is given said complainant to amend the bill of complainant by making additional parties defendants herein.

30 And on, to wit, on the second day of March, A. D. 1877, there was filed a bond for costs and a transcript of the proceedings in the circuit court of Cook county, and the papers filed in said court in the case of Henry J. Traver *vs.* Michael Traver *et al.*, which said bond for costs and transcript are, respectively, in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA, *Northern District of Illinois.* } *ss:*

Circuit Court. March Term, A. D. 1877.

HENRY J. TRAVER *vs.* MICHAEL TRAVER *et al.* } In Chancery.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court against def't, C. A. Richardson, and in default of payment by the defendant, Chas. A. Richardson, of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against my property for any costs taxed against him. Dated this second day of March, A. D. 1877.

FRED. C. INGALLS.

(Endorsed:) Filed Mch. 2, A. D. 1877. Wm. H. Bradley, clerk.

31 UNITED STATES OF AMERICA, *State of Illinois, Cook County.* } *ss:*

Pleas before the Honorable E. S. Williams, one of the judges of the circuit court of Cook county, at a term thereof, begun and held at Chicago in said county and State, on the third Monday (being the eighteenth day) of December, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the 101st.

Present: Honorable E. S. Williams, one of the judges of the circuit court of Cook county, State of Illinois.

L. L. MILLS, *State's Attorney.*
CHARLES KERN, *Sheriff.*

Attest: JACOB GROSS, *Clerk.*

Be it remembered that heretofore, to wit, on the 5th day of April, A. D. 1875, Henry J. Traver, by Messrs. Harding, McCoy, and Pratt, his solicitors, filed in said cause his certain bill of complaint and injunction bond in words and figures following, to wit:

Bill of Complaint.

STATE OF ILLINOIS, } ss:
Cook County. }

To the honorable the judges of the circuit court of said county, in chancery sitting:

32 Complaining, showeth unto your honors, your orator, Henry J. Traver, of said county, that on the 19th day of December, A. D. 1870, your orator and one Michael Traver, (who your orator prays may be made a party defendant hereto,) purchased from one John Dickson, of the city of Cincinnati, in the State of Ohio, the following described real estate, to wit, "all that part of the west half of the southeast quarter of section twenty-three (23) in township thirty-nine (39) north, of range thirteen (13) east, of the third principal meridian, which lies south of the southwestern plank road, (or Ogden avenue, so-called,) except the west fifteen (15) acres, and except the east ten (10) acres, and except also the right of way of the Chicago, Burlington and Quincy Railroad, said tract containing fifteen and nine hundred and twenty-two thousandths ($15\frac{922}{1000}$) acres, more or less, measuring to the center of the streets and avenues on either side;" and that on said 19th day of December, A. D. 1870, the said John Dickson and Mary Ann Dickson, his wife, by their good and sufficient warranty deed of that date, duly conveyed the said described land to your orator and the said Michael Traver, as tenant in common, each holding equal undivided part thereof; which said deed was duly recorded in the recorder's office of said Cook county, on the 19th day of May, A. D. 1871. A copy of said deed is hereto attached marked "Exhibit A," and is hereby referred to and made part hereof. Your orator further shows, that to secure a portion of the purchase money for said land, your orator and said Michael Traver executed to said Dickson their four several promissory notes dated the said 19th day of December, A. D. 1870, each for the sum of $5,373 67½-100, due respectively in two, three, four and five (2, 3, 4 and 5) years,
33 respectively, from date, with semi-annual interest at 8 per cent., and also duly executed and delivered their certain trust deed upon the said premises, (the respective wives of your orator and said Michael joining them), to one Enos Ayers as trustee, conditioned for the payment of the said promissory notes, which said

trust deed was duly recorded in the recorder's office of said county. That afterwards, to wit, on or about the 25th day of April, A. D. 1872, your orator and the said Michael Traver, duly subdivided and laid out into lots, blocks, streets, and alleys, the said land, which said subdivision was duly entitled "Traver's subdivision of the E. 15 $\frac{92}{100}$ acres of the W. 30 $\frac{92}{100}$ acres of that part of the southeast quarter of section 23, 39, 13, lying south of Ogden avenue, or S.W. Plank road." And your orator and the said Michael duly made and acknowledged their map or plat of said subdivision, which was duly recorded in the recorder's office of said Cook county on the 6th day of May, A. D. 1872. That by said subdivision said land was divided into three (3) blocks, with blocks as follows, to wit, block one (1) contained forty-three (43) lots, block two (2) contained forty-eight (48) lots, and block three (3) contained forty-four (44) lots. Your orator further shows that after the subdivision of said land, as aforesaid, your orator and said Michael Traver sold some of the lots in said block No. three (3), but that in making said sales the said Michael acted in the transaction of the business for both and received all the avails of such sales personally—both the money received therefor as also the notes and mortgages for the deferred payments to be made therefor. That your orator did not personally attend to the business connected with said land, but that the said Michael, who was a real estate operator, living in Chicago, attended to all the details thereof. That all your orator did in the
34 premises was to sign acknowledge several deeds for lots at the suggestion and request of said Michael.

Your orator further shows that afterwards, to wit, on or about the 5th day of September, A. D. 1872, your orator and said Michael Traver made a certain contract or agreement in substance as follows, to wit, that the said Michael Traver should convey to your orator all his, said Michael's, interest in and to all of block one (1) of the subdivision aforesaid, and lots twenty-one (21) to twenty-eight (28), both inclusive in block three (3) of said subdivision, and should well and truly pay and obtain the release as to the said described block one (1), and lots twenty-one (21) to twenty-eight (28), both inclusive, in block three (3) of the said trust deed, so made as aforesaid, by your orator and said Michael to said Enos Ayers for the use of said Dickson, so that your orator should own and hold free from all incumbrance whatsoever the said block one (1), and said eight lots in said block three (3) as your orator's sole and separate property. And that in consideration thereof your orator would quit claim and release to said Michael all the rest and residue then unsold of said "Traver's subdivision" subject to the said trust deed, and would also release to said Michael all your orator's interest in and to the moneys and notes and mortgages received by said Michael for account of the lots already sold by your orator and said Michael as aforesaid. That in pursuance of said agreement the said Michael Traver and wife did, on the said 5th day of September, A. D. 1872, duly convey to your orator the said block No. one (1), and said lots twenty-one (21) to twenty-eight (28), both inclusive, in block three (3) in said Traver's subdivision, which said deed being duly ac-

knowledged and delivered was, on the said 5th day of September, A. D. 1872, duly recorded in the recorder's office of said Cook county,
35 in book 152, page 374. That in further pursuance of said agreement, afterwards, to wit, on the 20th day of December, A. D. 1872, your orator duly made and delivered to said Michael Traver your orator's deed of conveyance of all the unsold portions of said blocks two (2) and three (3), excepting the said eight (8) lots as aforesaid, conveyed to your orator by said Michael, as aforesaid. And your orator shows that by the said agreement between your orator and said Michael it was understood that said Michael should pay all the said notes so made by your orator and said Michael in favor of said Dickson as fast as the same should become due in any event, but that if he was able so to do, he should, before the last of said notes matured, so pay and arrange as to obtain the release of the said block one (1) and said eight (8) lots in said block three (3) so deeded to your orator, as aforesaid, at as early a day as he could conveniently accomplish the same. And your orator relied upon the said promises and undertakings of said Michael, and fully hoped he would well and truly keep and perform the same. But your orator shows unto your honors that afterwards, to wit, on or about the 28th day of December, A. D. 1872, the said Michael finding it difficult and inconvenient to meet the said notes to said Dickson as they should mature, as your orator is informed and believes, made a certain contract or agreement with one James C. Hyde, by which it was agreed between them that said Michael should convey to said Hyde all his then interests in and to said subdivision known as "Traver's subdivision," and should also assign to said Hyde all the notes and securities then held by said Michael as the proceeds and avails of lots in said subdivision theretofore sold, and the said
Hyde in consideration thereof promised and agreed to well
36 and truly do and perform all the agreements of the said Michael with your orator touching the said land; that he, said Hyde, would well and truly assume and pay all the then unpaid notes due, as aforesaid, or to become due to said Dickson, and would procure a release of the said block one (1) and of the said eight (8) lots in said block three (3) from the said trust deed to said Enos Ayers, as aforesaid, so as to fully carry out the said agreement of the said Michael with your orator. That in pursuance of said agreement between said Michael and said Hyde the said Michael and wife did, on said 28th day of December, A. D. 1872, by their good and sufficient deed of that date, duly executed, acknowledged, and delivered, convey to said James C. Hyde all the then remaining interest of said Michael in and to the said "Traver's subdivision," and did also assign and deliver, in due form, all the notes and securities then held by said Michael as the proceeds or avails of sales of lots in said subdivision theretofore made. Which said deed and transfer of said notes and securities were then and there duly accepted by said Hyde in full compliance with the said agreement so made as aforesaid on the part of the said Michael. That the said deed from said Michael and wife to said Hyde was a deed of general warranty, and expressed upon its face a consideration of sixteen thousand dol-

lars ($16,000); but your orator, on information and belief, charges that no consideration was paid therefor by said Hyde, but that the sole and only consideration for the making of said deed was the said agreement of said Hyde to duly pay for and procure the release as aforesaid of said block one (1) and said eight (8) lots in said block three (3) in the said subdivision. Your orator further shows that in pursuance of said agreement, on the part of
37 said Hyde, he did afterwards, to wit, on or about the 8th day of February, A. D. 1873, procure from said Dickson and said Enos Ayers a release of said eight (8) lots in said block three (3) from the lien of said trust deed; that your orator is informed, and believes that the said Hyde did pay to said Dickson two of said four notes, and upon payment thereof the said Dickson and said Ayers did release all of said block three (3) (including the said lots of your orator as aforesaid), leaving the remaining two notes unpaid, and apparently a lien upon said blocks one (1) and two (2), the said block one being the property of your orator, and said block two belonging to said Hyde or his grantees. Your orator further shows that about the month of February, A. D. 1875, the said James C. Hyde, contriving and intending to cheat and defraud your orator, conspired and confederated with one Oswell A. Bogue, an associate or partner in business with said Hyde, and by some means procured from said Dickson the said two (2) unpaid notes of your orator and said Michael Traver, and the said trust deed aforesaid made to secure the same; that by some fraudulent arrangement said notes and trust deed were placed in the hands of said Bogue, as the apparent owner and holder of the same, and as the apparent purchaser thereof from said Dickson; but upon information and belief, your orator charges that said notes were really obtained from said Dickson by said Hyde; that in fact said Hyde paid the same to said Dickson, and the same should have been delivered up to your orator and said Michael for cancellation. And your orator shows that the said notes had been on or about the 28th day of December, A. D. 1872, either signed, endorsed, or guaranteed by said Hyde, and
38 also by a firm of Snyder and Lee, of Chicago, which said endorsement, guaranty, or signing was done as part of the contract between said Michael Traver and said Hyde, and in pursuance thereof, and as evidence that said Hyde was to pay the same; that in fact and equity, from the date of said contract between said Michael and said Hyde, the said notes to said Dickson as to all persons having knowledge of said contract were the notes of said Hyde, and a payment or satisfaction of the same by said Hyde would operate to extinguish the same as if paid by the original makers thereof. And your orator, on information and belief, charges that said Bogue had full knowledge of the said contract and undertaking of said Hyde, and that said Hyde was bound to procure the release of said block one (1) to your orator, and to surrender and deliver up to your orator the said notes so made to said Dickson as aforesaid, and that with full knowledge thereof, he said Bogue confederated and conspired with said Hyde to cheat and defraud your orator in manner following. That the said two (2) unpaid notes

being procured from said Dickson, and placed in the hands of said Bogue as the apparent owner thereof, by purchase from said Dickson, the said Bogue and said Hyde falsely representing to the said Enos Ayers that the said Hyde was the owner of the equity of redemption in and to both said blocks one (1) and two (2), and that said Bogue was the owner of the said two notes secured thereon, fraudulently procured from said Enos Ayers a release of said trust deed as to said block two (2), which said release of said block two (2) was by said Ayers and said Bogue duly executed, acknowledged, and delivered to said Hyde, (although made to your orator
39 and said Michael by name) and recorded in the recorder's office of said Cook county, on the 19th day of February, A. D. 1875: that by means of said fraudulent release the said Bogue now claims that the said trust deed has become a lien upon the said block one (1) for the full amount of the said two promissory notes, as aforesaid. And your orator, upon information and belief, charges that if the said Bogue has paid or invested any money in or about the said transaction that he has only loaned the same to said Hyde and holds the said Hyde's notes therefor, and that he only took the said two notes and trust deed from said Hyde as collateral thereto, and that in any event it is grossly inequitable in him to procure the said release for the purpose of doubling the encumbrance upon said block one (1); that the whole transaction has been without the knowledge or consent of your orator, and is in fraud of his rights. And your orator insists that as to the undivided half of all said subdivision; that is, as to the half part formerly owned by said Michael Traver, your orator, in purchasing the said block one (1) became the first alienee of said Michael, and that as to all the parts and portions of said subdivision, subsequently conveyed by said Michael, that your orator is entitled to have such portions so subsequently conveyed, sold, and exhausted before said block one (1) shall be sold to pay any portion of said debt secured by said trust deed, and your orator insists that no portion of said land conveyed by said Michael to said Hyde should be released of record from the said lien of said trust deed until the same shall be fully satisfied and the said notes cancelled. And your orator insists that the said releases, having been made without the knowledge or consent of your
40 orator, that by means thereof your orator's said land, to wit, said block one (1) is in equity released from the lien of said trust deed, and the same should be so decreed by the court. And your orator shows that by reason of the said releases, so made as aforesaid, the said block one (1) is apparently subject to an encumbrance of about eleven thousand dollars by the records, and that the same is a cloud upon your orator's title to said block, whereas in truth and in fact the said block one (1), for the wrong aforesaid, ought to be wholly released from the said incumbrance; and your orator charges that said Enos Ayers, in executing and delivering the said release, was guilty of gross negligence and carelessness, and has thereof greatly damaged your orator; that his said negligence and carelessness amounted to actual fraud; and your orator will insist, that by reason thereof, he shall pay to your orator what-

ever damages your orator may sustain by reason thereof, or as a consequence thereof; and your orator shows that said Michael Traver and said James C. Hyde are of doubtful responsibility and solvency, and that the said Hyde is now engaged in selling the remaining portions of said blocks two (2) and three (3) to purchasers who may be deceived by the records, and who may innocently become the owners of the same; that the money to be received for such sales as your orator is informed and believes will not be applied towards the payment and satisfaction of said trust deed, but that the said Bogue claims to hold the same as an encumbrance on said block one (1) only, and that your orator must pay the amount of said two notes before he can procure the release thereof; and your orator claims that as to all purchases of any part of said property from said Hyde, or from said Michael
41 Traver after September 5th, 1872, who are innocent of actual knowledge of said agreement of said Michael and said Hyde, the said trust deed to said Ayars should be decreed to be a first lien upon the undivided one-half part of the premises purchased by them, respectively, and that the undivided one-half of all the premises so purchased should be decreed to be sold to satisfy said trust deed before said block one (1), and that as to all premises owned by said Hyde, or by any purchases from him, with knowledge of the equities of your orator, the said trust deed should be established as a first lien on the whole thereof, and the same ordered to be sold before said block one (1); that as to all said premises the said releases of said blocks two (2) and three (3) shall be wholly set aside and said trust deed restored to its former state as a lien upon the same; and orator further claims that said Hyde, and said Bogue, and said Ayars, by reason of their said fraudulent prrpose and acts shall be decreed to satisfy and release said trust deed as to said block one (1) by duly delivering to your orator a release thereof, and that they be decreed to surrender and deliver up to your orator for cancellation the said two notes made by your orator and said Michael.

Your orator further shows that said Hyde in making sales of lots in said subdivision has taken from purchasers thereof notes and mortgages for payment of part of the purchase price thereof, and your orator charges that if said trust deed is to be held as a lien for any amount upon said block one (1), that all the said notes and mortgages so received by said Hyde as aforesaid should be decreed to be applied towards the payment of said first trust deed and the release of said block one (1). (Amendment.)

42 Your orator further shows that he is informed and believes that Henry L. Hammond, Mary Ann Pearson, Frank J. Smith, Alvin Hullburt, John Borden, William Borden, Frank J. Weidinger, N. S. Goss, Maria Shaw, L. C. Payne Freer, Caroline E. Jones, Mary E. Brace, and Gwynn Garnett, own or claim to own some interest in said blocks two or three, or some part thereof, but what interest or claim the said several persons have your orator is not sufficiently advised to state, but charges that whatever the same may be it is subsequent to, and subject to, the rights and equities of your orator in the premises. All of which several acts and doings

are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises. Inasmuch, therefore, as your orator is remediless at and by the strict rules of the common law, and relievable only in equity, where matters of this sort are properly cognizable and relievable; to the end, therefore, that justice and equity may be done, your orator prays that the said Michael Traver, James C. Hyde, Oswell A. Bogue, Enos Ayars, Henry L. Hammond, Mary Ann Pearson, Frank J. Smith, Alvin Hulburt, John Borden, William Borden, Frank J. Weidinger, N. S. Goss, Maria Shaw, L. C. Payne Freer, Caroline E. Jones, Mary E. Bruce, and Gwynn Garnett, may be made parties defendant to this your orator's bill of complaint.

That they may be duly summoned to appear and answer the same fully and specifically, but not on oath, the oaths of said defendants and each of them being hereby expressly waived. That a hearing may be had, and on the hearing hereof, the said Hyde, and Bogue, and Ayars, may be decreed to release the said block one (1) from the lien of said trust deed, and they may be decreed
43 to surrender and deliver up to your orator for cancellation the said two notes made by your orator and said Michael Traver, and payable to said Dickson, or in the event your orator's case will not warrant such final order and decree in the premises, that then the said releases of said trust deed as to said blocks two and three (2 & 3), excepting the aforesaid eight (8) lots of your orator, and said block three (3), be set aside and said trust deed declared to be a first lien upon all said blocks two and three (excepting said eight lots and aforesaid), and that the same be declared to be sold before said block one. And that said defendants, Hyde, Bogue, and Ayars be decreed by the court to pay and satisfy to your orator all damages and injuries by him sustained, by reason of their unwarrantable and inequitable acts and doings in the premises, and that an account may be taken of all such damages and injuries sustained by your orator; and for all such other and further relief in the premises as to equity may appertain and your orator's case may require. And may it please your honors in the meantime to grant to your orator a writ of temporary injunction directed to said James Hyde, Oswell A. Bogue, and Enos Ayars, commanding and restraining them and each of them, their servants, agents, and attorneys from selling, encumbering, transferring, or in any manner changing or using the said trust deed made by your orator and said Michael Traver to said Enos Ayars, dated Dec'r 19th, 1870; and the said two promissory notes made by your orator and said Michael Traver, dated said Dec'r 19th, 1870, and payable in four and five years from date, respectively, to order of John Dickson, with 8 per cent. int. semi-annually, each for the sum of $5,373 67½-100, secured to
44 be paid by said trust deed, and also from selling, encumbering, or conveying any part or portions of said blocks two (2) and three (3) in said Traver's subdivision aforesaid, and also from transferring, conveying, pledging, selling, or encumbering any of the notes and security therefor, taken by said Hyde in payment, or part payment of any part or portions of

said blocks two (2) and three (3), to the end that all and singular may be retained to abide the order of the court in the premises until the further order of this court.

And as in duty bound your orator will ever pray, &c.

HENRY J. TRAVER.

HARDING, McCOY AND PRATT,

Solicitors.

STATE OF ILLINOIS, } ss:
Cook County, }

Henry J. Traver, being first duly sworn, doth depose and say, that he has heard read the foregoing bill by him subscribed, and knows the contents thereof, and that the same, and the matters and things therein stated, are true of deponent's own knowledge, except as to those things therein stated to be upon information and belief, and as to those things he believes the same to be true, and further says not.

HENRY J. TRAVER.

Subscribed and sworn to before me, this 5th day of April, A. D. 1875.

[SEAL.] LORIN GRANT PRATT,
Notary Public.

45 Circuit Court. April Term, A. D. 1875.

HENRY J. TRAVER *v.* MICHAEL TRAVER, JAMES C. HYDE, OSWELL A. BOGUE, ENOS AYRES, HENRY L. HAMMOND, MARY ANN PEARSON, FRANK J. SMITH, ALVIN HULBERT, JOHN BORDEN, WILLIAM BORDEN, FRANK J. WEIDINGER, N. S. GOSS, MARIE SHAW, L. C. PAYNE FREER, CAROLINE E. JONES, MARY E. BRUCE, GWYNN GARNETT.	In Chancery. For relief and injunction.

Issue summons as above and writ of injunction to def'ts Hyde, Bogue, and Ayres, as prayed for.

HARDING, McCOY AND PRATT, *Solicitors.*

STATE OF ILLINOIS, } ss:
Cook County, }

Henry J. Traver, being first duly sworn, doth depose and say he fears, if notice of the application for injunction upon the foregoing bill is given to the defendants, that said defendants, Hyde and Bogue, will take advantage of the time to convey, assign, or encumber some or all of the property in said bill sought to be enjoined. He therefore asks for an injunction without notice to the said defendants, and further says not.

HENRY J. TRAVER.

Subscribed and sworn to before me, this 5th day of April, A. D. 1875.

[SEAL.] LORIN GRANT PRATT,
Notary Public.

46 To the honorable the judges of the circuit court:

I have examined the foregoing bill, and it appearing by affidavit that the rights of complainant will be unduly prejudiced unless injunction issue immediately, I recommend the following order.

Dated April 5th, 1875.

Fees, $5.00; paid. HIRAM M. CHASE,
Master in Ch'y.

47 Let the writ of injunction issue according to the prayer of the within bill upon complainant's filing bond to defendants in five thousand dollars conditioned according to law with surety to approved by the master recommending this order.

E. S. WILLIAMS,
Judge of Cook Cir. Court, Ills.

To the clerk of the circuit court.

Injunction Bond.

Know all men by these presents, that we, Henry J. Traver and John F. Coffman, of the county of Cook and State of Illinois, are held and firmly bound unto James C. Hyde, Oswell A. Bogue, and Enos Ayers, of said county and State aforesaid in the sum of five thousand dollars to be paid to said James C. Hyde, Oswell A. Bogue, and Enos Ayers, their executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves jointly and severally, and our respective heirs, executors, and administrators, firmly, by these presents. Sealed with our seals, and dated this, the 5th day of April, A. D. 1875.

Whereas the above bounden, Henry J. Traver, has filed his bill of complaint in the circuit court of the county of Cook and State of Illinois against the above-named James C. Hyde, Oswell A. Bogue, and Enos Ayers, praying among other things for an injunction to restrain the said Hyde, Bogue, and Ayers from selling, encumbering, or in any manner changing or using a certain trust deed, and certain notes and mortgages in said bill, particularly mentioned and described. And whereas the Honorable E. S. Williams,

48 one of the judges of said court, has allowed an injunction for that purpose, according to the prayer of said bill, upon the said Henry J. Traver, giving bond and security as provided by law and as required by the order of said judge granting said injunction. Now, therefore, the condition of the above obligation is such, that if the above bounden, Henry J. Traver and John T. Coffman, their executors or administrators, or any of them, shall and do well and truly pay or cause to be paid to the said James C. Hyde, Oswell A. Bogue, and Enos Ayers, their executors, administrators, and assigns, all such costs and damages as shall be awarded against the

said complainant, the said Henry J. Traver, in case the said injunction shall be dissolved, then this obligation to be void; otherwise to remain in full force and virtue.

HENRY J. TRAVER. [SEAL.]
JOHN T. COFFMAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
HIRAM M. PRICE.

Approved: HIRAM M. CHASE,
Master in Chancery.

And thereupon, on the 7th day of May, A. D. 1875, there was filed in said cause the appearance of Enos Ayers, one of said defendants, in words and figures following, to wit:

Appearance of Enos Ayres.

Circuit Court of Cook County.

HENRY J. TRAVER
vs.
MICHAEL TRAVER *et al.*

We hereby enter the appearance of Enos Ayers, one of
49 def'ts in above-entitled cause, and ask twenty days' time to answer.

MONROE, BISBEE AND BALL.

And thereupon, on the same day, to wit, May 7th, A. D. 1875, the following proceedings were had and entered of record in said court, to wit:

Order May 7th, 1875.

HENRY J. TRAVER
vs.
MICHAEL TRAVER *et al.* } 15758. 1675. Bill.

This day came Messrs. Monroe, Bisbee and Ball and entered their appearance as solicitors for Enos Ayers, one of the defendants to the bill of complaint in said cause. And on motion it is ordered that the time for said defendant to plead, answer, or demur to the bill of complaint in said cause be, and it hereby is, extended twenty days from date.

And thereupon, on the 7th day of October, A. D. 1875, the answers of defendants, Hyde, Hammond, and Bogue were filed in said cause in words and figures following, to wit:

In the Circuit Court Cook County. In Chancery.

STATE OF ILLINOIS,
County of Cook, } *ss:*

The several answers of James C. Hyde, one of the defendants to the bill of complaint of Henry J. Traver, complainant.

This defendant, reserving unto himself all benefit of exception which can or may be had or taken to the said bill, for answer thereto, says: That he admits it to be true, as stated in said bill, that on or about the nineteenth day of December, A. D. 1870, the said complainant and Michael Traver, who is a
50 brother of said complainant, purchased from John Dickson, of Cincinnati, the land and premises mentioned and described in said bill, and that said Dickson and wife conveyed said land to said complainant and said Michael Traver, by deed bearing date on said day, which was duly recorded, but whether the Exhibit "A" attached to said bill is a correct copy of said deed this defendant does not know and cannot state. And this defendant also admits it to be true that said complainant and Michael Traver, to secure a portion of the purchase money of said land, made their four promissory notes, dated the same day, for the sum of $5,373.67½ each, payable to said Dickson in two, three, four, and five years, respectively, with semi-annual interest at 8 per cent., and also executed a deed of trust upon said land to said defendant, Enos Ayers, as trustee, to secure the payment of said four notes, which was duly recorded. This defendant also admits it to be true that afterwards, on or about the 25th day of April, 1872, said complainant and Michael Traver subdivided said land and laid out the same in blocks, lots, streets, and alleys, which subdivision was entitled as in said bill stated, and that the map or plat of said subdivision was duly acknowledged and recorded; that said land was thereby divided into three blocks, and that there are forty-three lots in block 1, forty-eight lots in block 2, and forty four lots in block 3.

And further answering, this defendant says it is true that, after the subdivision of said land, the said complainant and Michael Traver sold some of the lots in said block 3 and made deeds of conveyance therefor, executed by both, but whether said Michael acted for both in transacting the business this defendant does not know and cannot state, nor whether said Michael Traver received
51 all of the avails of such sales, either in money, notes, and mortgages or otherwise. This defendant avers that the said complainant and Michael Traver also sold and conveyed, by their deed of warranty, on or about the second day of September, A. D. 1872, lots ten to thirty-nine, both inclusive, in said block two, to one Charles M. Earll, for the sum of $15,000, of which consideration $9,000 consisted of three purchase money notes for $3,000 each, dated the day last named, and due in 1, 2, and 3 years, respectively, and secured by a deed of trust on said lots 10 to 39. And this defendant, further answering, says he believes it to be true that, on or about the 5th day of September, A. D. 1872, the said complainant and said Michael Traver made an agreement between themselves with respect to said land, by which said Michel was to convey, and did, on or about the day last aforesaid, convey to said complainant all of said Michael's interest in said block one and lots 21 to 28, both inclusive, in said block 3. And this defendant believes that said Michael agreed to assume the incumbrance created on said last men-

tioned land by said deed of trust and to protect said complainant against any sale of said land under said trust deed, but this defendant does not believe that it was agreed on the part of said Michael that he, said Michael, would pay all the notes made by complainant and Michael to said Dickson as fast as the same should become due, in any event, or that said Michael agréed to obtain the release of said block 1 and lots 21 to 28 from the lien of said deed of trust at any specified time. And this defendant avers that there is no prospect of any sale under said deed of trust; that two of the notes thereby secured are paid and the interest is paid up on the other two; that the last note is not due until the 19th day of December, 1875; and the other unpaid note has been
52 extended to the same date, a portion of the principal and all the interest to the 19th day of December, 1874, having been paid, so that no sale under said deed of trust could in any event be made until the close of the present year. And this defendant further answering, says that it is true that on or about the 20th day of December, A. D. 1872, said complainant and his wife executed a quit-claim deed to said Michael Traver and thereby conveyed lots 1, 2, 3, 4, 5, 6, 7, 34, 41, 40, 42, & 43, in said block 3, and lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 40, 41, 42, 43, 44, 45, 46, 47, & 48, in said block 2, which was recorded January 7, 1875. And this defendant further answering, says it is true as in said bill stated, that said Michael Traver found it not only difficult and inconvenient, but impossible for him to meet and discharge the endebtedness evidenced by said notes payable to said Dickson, and secured by said deed of trust to said Ayres as trustee. And this defendant avers that the said complainant labored under a like difficulty at the time he made his said agreement with said Michael; that the facts were that said complainant and said Michael purchased said land from said Dickson in the month of December, A. D. 1870, for a consideration of twenty-three thousand eight hundred and eighty-three dollars, of which they paid in cash the sum of twenty-three hundred and eighty-eight dollars only, being but one-tenth part of the purchase money, and gave the said four notes for $5,373.67½ each to said Dickson for the balance, the first of said notes falling due in December, 1872; that in the meantime said complainant and said Michael had sold twenty-three of the lots in said block 3 for an aggregate sum of about twelve thousand seven hundred dollars, of which they had executed and delivered to
53 the purchaser's deeds of warranty with the usual covenants against incumbrances, expecting to be able to procure a release of the lots so sold from the lien of said trust deed to said Ayres as trustee; that of the said consideration of $12,700.00, there was, according to this defendant's best information and belief, about the sum of eight thousand five hundred dollars taken in notes and mortgages, which were not available in the market to procure money upon without a release of the prior lien of said deed of trust; that said complainant and said Michael were unable to procure such release, and said complainant becoming nervous at the approaching maturity of said first note, due to said Dickson in December,

1872, made his agreement with said Michael for the reason that he feared a foreclosure and sale under said trust deed; that when said note became due in December it was not paid, nor any part thereof, and said Dickson elected, under the provision of said deed of trust, that the whole sum secured by said deed should be at once due and payable, and thereupon requested and instructed the said Enos Ayres, trustee, to proceed to sell said land, to make the whole amount so elected and declared to be due, with the interest to that time; that said complainant and said Michael were alike without the necessary means or resources of their own to pay said first note, and were powerless to prevent said sale, and were in immediate danger of having their entire interest and equity in the whole tract sold out to pay off and discharge the amount secured by said trust deed, which would not only be a great loss to them in the sacrifice of said interest and equity, but would leave them liable to a very large amount on the covenants in the several deeds which they had executed and delivered to various purchasers as aforesaid.

54 That up to this time this defendant had nothing to do with either of the Travers in respect to the land in question, and knew nothing whatever of any of the transactions above mentioned. That after said first note to Dickson had become due and the said trustee was about to advertise and sell said land, under the powers conferred by said deed of trust, the said Michael Traver came to see this defendant and desired to procure the aid of this defendant in obtaining sufficient money to pay off and discharge the said first note payable to Dickson, with the interest thereon; that this defendant did endeavor to procure the money for the said Michael, and visited a number of persons for that purpose, but found it impossible to obtain the money, as the security to be given on a portion of the said land was unacceptable to parties having money to loan, on account of the prior lien of said trust deed; that a few days afterwards said Michael again came to this defendant and proposed to deed and convey to this defendant all of said block 2, (the deed for lots 10 to 39, inclusive, to be executed by one Charles M. Earl,) and 12 lots in said block 3, and also to assign and deliver to this defendant certain notes secured by trust deeds on lots in said block 3, amounting to about $5,000, being a portion of the purchase-money notes before referred to, the security of which was subsequent and subordinate to the lien of said trust deed to said Ayres, provided that this defendant would assume the said incumbrance evidenced by the said Dickson notes and the deed of trust securing the same, and so manage as to prevent a sale of that part of the land which had been conveyed to said complainant and that part conveyed by said complainant and said Michael to third parties from sale under said deed of trust. That it was then understood that this defen-

55 dant should go to Cincinnati, in the State of Ohio, where the said Dickson resides, and make such arrangement with him as should be satisfactory to this defendant to enable him to manage the property as he should desire; that should this defendant succeed in effecting a satisfactory arrangement with said Dickson, and would enter into agreement aforesaid, that this defendant should have the

control of the whole subdivision so far as regarded the said deed of trust to said Ayres; and it was distinctly and expressly understood that this defendant should have the right to procure releases of any part or portions of the land from the lien of said trust deed as might be necessary to enable this defendant to sell or dispose of such portions as he should think proper of that part to be conveyed to this defendant; that the said understanding between said Michael and this defendant took place on or about December 28, 1872, and shortly afterwards, and before the same was carried out, and before any conveyances were made, said complainant came with said Michael to the office of this defendant, and the whole matter was then talked over and discussed between this defendant, said complainant and said Michael, and said complainant not only made no objection to the proposed arrangement, but expressed his entire approbation thereof, and with respect to the procuring of releases from the lien of the said trust deed to Ayres, and the order thereof, the said complainant expressed his full consent that this defendant should procure such releases of such parts of the property as this defendant might wish to have released, at such times as this defendant should deem desirable, and that that portion owned by complainant might be the last released, as he, the said complainant, did not desire to sell or dispose of his
56 portion of the property, which it was understood, that this defendant should proceed to sell or dispose of such parts of the portion to be conveyed to him as he might deem it advantageous to sell or dispose of. That it was well understood between said complainant and this defendant that in the event this defendant should enter into and consummate said agreement with said Michael, that this defendant should be free to procure and use such releases at his pleasure, and this defendant would not have entered into said agreement, nor assumed the obligations aforesaid and pledged his credit thereto with said Dickson upon any other consideration. That the want of power to procure and use such release was the main cause of the difficulty experienced by said complainant and said Michael, and that unless this defendant had been at liberty to procure releases as aforesaid, he would have been, as far as the land in question is concerned, as badly tied up as the Travers were, and there would have been no inducement for this defendant to take hold of the matter at all; and had the Traver imposed or insisted on such a restriction the whole arrangement would have been defeated, and as this defendant fully believes the entire property would long ago have been sold out under the trust deed securing said Dickson notes. And this defendant further answering, says that after the understanding aforesaid, and on or about the first day of January, 1873, this defendant went to Cincinnati, in the State of Ohio, for the purpose of seeing said John Dickson in order to effect an understanding with said Dickson so as to stop the sale of said land under said deed of trust to Ayres, and to enable this defendant to carry out said understanding with said Michael Traver. That when this defendant began to dis-
57 cuss the subject of said Traver note and deed of trust

with said Dickson, he stated that he would make no arrangements of any kind with the Travers, nor treat with them at all, as he had no confidence in their ability to carry out any agreements they might make; that he had given orders to his attorney at Chicago to proceed to sell the land under said trust deed; that after learning that this defendant proposed taking an interest in the matter, the said Dickson agreed with this defendant that if this defendant would pay the said first two of the notes payable to Dickson, due respectively in December, 1872, and December, 1873, and endorse the other two notes, and procure the endorsement of Snyder and Lee, of Chicago, thereon, he, the said Dickson, would make his order to sell the property under said deed of trust, and would release the whole of said block 3 from the lien of said trust deed, and that, upon the payment by this defendant of the additional sum of $3,000, he, the said Dickson, would release all of said block 2. And this defendant then returned to Chicago and had an interview with said Michael the next day after his return, and informed him fully of the result of his visit to said Dickson. That said Michael seemed to be perfectly satisfied, and this defendant told said Michael to report the whole matter to his brother, the said complainant, and that the arrangement could now be carried out and consummated. That within a day or two afterwards, the said understanding and arrangement was consummated, and said Michael delivered to this defendant two deeds, one executed by said Michael and wife, dated December 28, 1872, acknowledged January 7, 1873, conveying to this defendant lots 1 to 7, both inclusive, and lots 34 and lots 40, 41, 42, 58 and 43 in said block 3, and lots 1 to 9, both inclusive, and lots 40 to 48, both inclusive, in said block 2; the other deed executed by Charles M. Earll & wife dated December 28, 1872, and acknowledged January 3, 1873, conveying to this defendant lots 10 to 39, both inclusive, in said block 2, being the balance of the whole of said block 2, not conveyed in the deed from said Michael to this defendant. That this defendant then executed two promissory notes, one for six thousand dollars and one for four thousand dollars, dated December 28, 1872, and made payable 3 years after date to the order of Michael Traver, which was considered as purchase money paper, in order to facilitate the negotiation of the same, which were endorsed by said Michael, secured by two deeds of trust upon said block 2, executed by this defendant to Henry L. Hammond as trustee, and upon these notes and the deed of trust, this defendant procured the sum of $8,550.00 in cash, being the amount of the face of said notes, less the sum of $1,450.00, which this defendant paid for the interest and commissions in procuring said loan. This defendant then added sufficient money, obtained from other sources, to make up the sum of $12,000.00, which he paid to said Dickson, and took up and cancelled the said first two of the Dickson notes, and procured a release of said block 3, executed by said Ayres, trustee, and by said Dickson from the lien of said trust deed to said Ayres. And thereby the title of the purchasers from said complainant and said Michael

of said portion of said block 3, heretofore mentioned, was cleared, and said Michael and said complainant relieved of all liability under the covenants in their deeds to said purchasers by reason of said deed of trust to said Ayres, and the impending sale of the whole property under said deed of trust was averted,

59 and this defendant says that his agreement with said Michael was not in writing, but was in substance as hereinbefore stated; that this defendant did not agree to pay off and discharge the said Dickson notes and deed of trust at any specific time, nor did he agree to devote the proceeds of the sale or disposal of that part of the land conveyed to him to that specific purpose, but that his agreement was simply to manage the property in such way as he deemed best, and that he would protect complainant and the said purchasers from complainant and said Michael of said parts of said block 3, from sale of their respective property under said deed of trust, which this defendant has thus far done and expects to do, and to finally extinguish the lien of said deed of trust; and this defendant avers that the facts in regard to the execution of said notes, and the deeds of trust to said Hammond by this defendant, and the procuring of the release aforesaid, were all well known at the time to said complainant, who interposed no objection of any kindto said deeds of trust, or to said release of said block 3, but on the contrary expressed his satisfaction therewith, and stated that he was well satisfied that the property was in the hands of this defendant; and this defendant avers that said block one is, and was at the time of the execution of said release by said Enos Ayres, trustee, of the value of between twenty-five thousand and thirty thousand dollars, and is worth, at all events, not less than twenty-five thousand dollars; and this defendant, further answering, says that after the completion of the transactions aforesaid, this defendant began making improvements on said property, and built and erected, during the summer of 1873, four two-story frame dwelling-houses, which costs the sum of two thousand dollars each; that he also enclosed the whole of said block

60 2, with a fence, and constructed one thousand feet of sidewalk thereon, and planted shade trees. That during the following year he caused the city water to be distributed by conducting pipes through said block 2 and 3 at an expense to this defendant of about one thousand dollars. And this defendant avers that said improvements so made by this defendant were of great benefit to said complainant in enhancing the value of said block 1; but that said complainant was so penurious or incapable that he made no improvements whatever, not even a sidewalk, and would not join with this defendant in procuring the city water so as to have the same carried into block 1. And this defendant, further answering, says that he paid the interest to said Dickson on said two remaining notes held by him, and that on or about the 28th day of December, 1874, one of said notes came due, and at the time of its maturity it was owned by a bank in the State of Kentucky. That at that time money was very difficult to obtain, and as the matter then stood there was a lien on said blocks 1 and 2 under the trust deed

to said Enos Ayers to the amount of the said two notes of $5,373.67 each, amounting to $10,747.35, & six months' interest thereon, which was a prior lien; but that there was a junior lien created by the deeds of trust executed by this defendant to secure the notes for $6,000 and $4,000, respectively, payable to said Michael, in which Henry L. Hammond was trustee, on the whole of block 2, and that consequently the said block 1, being said complainants' portion of said land was first liable to be sold to satisfy said trust deed to Ayres in case of sale, and that in equity the holder of said junior incumbrance on said block 2 had the right to compel the holder of said prior encumbrance of $10,747.35 to exhaust his security
61 on said block 1 before resorting to any part of said block 2.

This defendant further says that at the time of the making of the said notes for $6,000 and $4,000, payable to said Michael Traver as aforesaid, and the deeds of trust securing the same by this defendant, Henry L. Hammond and Oswell A. Bogue, were engaged in business in Chicago as financial and investing agent, and that this defendant, when he desired to procure money as aforesaid, applied to them for that purpose. That at that time this defendant had no connection of any kind whatever in business with either said Hammond or said Bogue, and thereupon the said Hammond [and] said Bogue procured said loan of $10,000 for this defendant from one C. A. Richardson, of Massachusetts. That said complainant well knew at the time that said loan was procured through said Hammond & Bogue, and how the same was secured, and made no sort of objection of any kind, as aforesaid. And that when one of said notes payable to said Dickson came due in December, 1874, the bank which was then the holder of said note pressed for payment and this defendant found it necessary, in order to meet said note, to procure more money by sale or otherwise of property in said block 2; that this defendant could not procure money in any part of said block 2, without procuring a release as to such portion as he should raise money upon, from the liens of both the incumbrances, that is, from the lien of the trust deed to said Ayres, and the trust deeds to said Hammond; that he could not raise money to pay off the note then due and payable to said Dickson, because the holder of the notes secured by the said trust deed to Hammond having security on said block 2 only, would not consent to release a part of the security, as it could not be expected they would do. That under these cir-
62 cumstances, ascertaining that he could sell and dispose of a portion of said block 2, provided he could free such portion from all incumbrances, this defendant applied to said Hammond & Bogue and requested them to procure said Richardson to allow this defendant to pay off and extinguish the said notes for $4,000 and $6,000, respectively, made by this defendant, and held by said Richardson, and to purchase the aaid notes payable to said Dickson, on which this defendant would pay enough to reduce the whole amount to $10,000, and extend the note, then about due, for the period of one year, and to release the said block 2 from the lien of said trust deed to Ayres. That said Hammond and Bogue complied with this defendant's request, and this defendant thereupon sold off a portion

of said block 2, and paid the interest then accrued on the said Dickson notes, a sufficient portion of the principal thereof, to reduce the same to the sum of ten thousand dollars; the said $4,000 and $6,000 notes made by this defendant & then held by said Richardson were paid up & extinguished, and said Hammond & Bogue, in behalf of said Richardson and as his agents, purchased the said two notes payable to said Dickson, and the said Richardson now holds and owns the same. And that the release of said block 2 from the lien of the trust deed to said Ayres was made by said trustee at the request of this defendant, and with the consent of the legal holder of said Dickson notes, in pursuance of the arrangement made by this defendant with said Hammond & Bogue, as the agents of said Richardson, and in order to enable this defendant to dispose of property in order to raise money to effect the purposes aforesaid. And further answering this defendant says it is wholly untrue that this defendant confederated or conspired with said Bogue to cheat, defraud, or in any way injure said complainant. That it is
63 wholly untrue that said Dickson notes were paid by this defendant, or any part of the same, except that this defendant paid enough to reduce the said notes to the sum of ten thousand dollars, as aforesaid; and it is totally untrue that said transaction was anything otherwise than a *bona fide* purchase of said Dickson notes by said Hammond & Bogue, as the agents and in behalf of said Richardson. And it is not true that any confederation or conspiracy ever existed between the defendant and said Bogue, or any other person or persons. And this defendant avers that he has managed the property to the very best advantage that he was able to do, having regard to the interest of all the parties concerned; that he has repeatedly saved said property from forced sale under said trust deed to Ayres, and that had it not been for the effects of this defendant, and the success of such efforts as hereinbefore set forth, the whole property would have been long ago sold out, and said complainant would have been without any interest or equity therein, but his interest & the value of the same would have been wholly lost. This defendant, further answering, says that in the sales which he has made of property in said blocks 2 and 3, this defendant, although he received a portion of the consideration in money, could not procure all in money, or in notes, but took other property in part payment. And this defendant avers that the statement in said bill, to the effect that this defendant is of doubtful responsibility, is wholly untrue; that, on the contrary, this defendant is possessed of ample property, and is abundantly able to make good all his liability in respect to paying off and discharging the said Dickson notes and deed of trust to said Ayres, aside from the property in question, or the value thereof. That this
64 defendant has, so far as he understands and believes, acted justly and fairly in the transaction, and in good faith, and in full accordance with his agreement with said Michael Traver, which was fully understood by said complainant as aforesaid. And this defendant avers that said deed from said complainant & wife to said Michael was an absolute deed in

fee-simple, & and that he took the conveyance aforesaid from said Michael Traver and said Earll as absolute conveyances in fee-simple, and that there was no agreement by which the land so conveyed was charged with any trust or confidence; and this defendant further avers that there is a statute of this State which provides that all declarations of trust or confidences of any lands, tenements, or hereditaments shall be manifested and proved by some writing signed by the party who is enabled to declare such trust, or else shall be void & of no effect. And this defendant claims the benefit of said statute. And further answering, this defendant says that it is not true that this defendant was in partnership with said Oswell A. Bogue at the time when said loan was negotiated upon the said $6,000 and $4,000 notes, secured by said deeds of trust to said Hammond, nor at the time of the purchase by said Richardson through said Hammond & Bogue, as his agents, of the said last two of the Dickson notes; that this defendant was never in partnership with said Bogue until after the 1st day of March last; that on or about said first day of March, A. D. 1875, this defendant took a portion of the office in Honore block in Chicago, occupied by Hammond & Bogue, and after he removed there, early in the month of March, this defendant formed a copartnership with said Bogue in the real estate commission business, which is the extent of their partnership relations,
and consist only of the buying and selling of real estate on
65 commission and has and has no relation to the other business
of said Bogue or of this defendant. And further answering, this defendant says it is not true that any misrepresentations were made to said Ayres at the time the said release was executed by him of said block 2, either by this defendant, or as this defendant is informed and believes, by said Bogue. That this defendant applied to said Ayres for said release, as he believes he had a full right to do under the agreement and understanding aforesaid, and that said Bogue, for the holder of the notes secured, consented to said release. And this defendant denies all and singular the statements in said bill imputing fraud or any fraudulent interest or purpose to this defendant, and avers that all charges of fraud or misrepresentation and confederacy in said bill contained against this defendant are wholly untrue. And this defendant avers that he did not seek to connect himself with the said Michael Traver or with said complainant, nor to become interested in the property in the manner aforesaid; but on the contrary was sought by said Michael, who proposed and urged upon this defendant to enter into the transactions heretofore detailed. That complainant frequently visited this defendant, and, so far as this defendant knew, approved fully of the said agreement between said Michael and this defendant. And this defendant has never concealed, or sought to conceal, any of said transactions from said complainant; that said Michael was fully aware of all that was done by this defendant, and was never dissatisfied, to the knowledge of this defendant, and this defendant believes that said complainant also fully understood that releases were to be procured as hereinbefore stated, and was well informed in regard to all that was done, and that he has fre-

quently expressed his satisfaction with the management of the property by this defendant.

66 And this defendant denies all and all manners of unlawful combination and confederacy wherewith he is by the said bill charged. Without this that any other matter, cause, or thing in the said bill contained, material or necessary to be answered unto by this defendant and not herein well and sufficiently answered, traversed, confessed, and avoided or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain, and prove as this honorable court may direct, and prays to be hence dismissed with his reasonable costs and charges, etc.

JAMES C. HYDE.
FRED. C. INGALLS,
Sol'r & of Counsel for Def't.

STATE OF ILLINOIS, *County of Cook.*

James C. Hyde, being first duly sworn, deposes and says, that he has read the foregoing answer by him subscribed and knows the contents thereof, and the same is true of his own knowledge, except as to the matter therein stated on his information and belief, and as to those matters he believes it to be true.

JAMES C. HYDE.

Subscribed and sworn to before me, on this 10th day of May, A. D. 1875.

[SEAL.] FRED'K C. INGALLS,
Notary Public.

67 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County. In Chancery.

The joint and several answer of *of* Henry L. Hammond and Oswell A. Bogue, two of the defendants, to the bill of complaint of Henry J. Traver, complainant.

These defendants, saving and reserving unto themselves, and each of them, all benefit of exception which can or may be had or taken to the said bill, for answer thereto say: That they are informed and believe that said complainant and the said defendant Michael Traver purchased the land and premises described in said bill from John Dickson, as therein stated, but these defendants have no personal knowledge in regard to the particulars of said purchase. And these defendants admit it to be true that as a part consideration in the purchase of said land, said complainant and said Michael Traver made and delivered their four promissory notes to said Dickson, payable to his order, bearing date on the nineteen day of December, A. D. 1870, for the sum of five thousand three hundred and seventy-three and 67½-100 dollars each, and due in two, three, four and five years respectively after date, with interest, payable semi-annually, at the rate of eight per cent. per annum;

and that in order to secure the payment of said notes, the
68 said complainant and said Michael Traver executed a deed of trust upon said land to said defendant, Enos Ayers, as trustee, as in said bill alleged. And these defendants admits that said land was afterwards subdivided and laid out into lots, blocks, streets, and alleys, as stated in said bill. And these defendants further answering, say that they have no personal knowledge with respect to the alleged agreement between said complainant and said Michael Traver, but on their information and belief they deny that said agreement and understanding was of the effect as in said bill stated, but these defendants admit that said complainant agreed to convey and quit-claim, and did so convey all his interest in the said block 2 and 3, except said eight lots in said block 3, to said Michael Traver, and that said Michael agreed to and did convey and quit-claim to said complainant the said block 1 and said eight lots in said block 3, as in said bill stated. And these defendants further answering, say that they have no personal knowledge in respect to the alleged understanding and agreement between said Michael Traver and said defendant, James C. Hyde, but these defendants, on their information and belief, deny that said agreement is correctly set forth and stated in said bill, but these defendants are informed and believe that said Hyde did agree to assume the said Dickson incumbrance on said land, but that he was not
69 bound to pay off the same at any particular time, but had a right to extend the payment of the same as might be desired by him, so that he kept the interest paid and protected the said complainant and the grantees of said complainant & said Michael Traver from a sale of their respective portions of the land under said deed of trust; and these defendants admit it to be true that said Michael Traver and his wife, on or about the 28th day of December, A. D. 1872, conveyed to said James C. Hyde all the interest of said Michael in said land, and that said Hyde paid the ten first of the said Dickson notes, and procured a release of said block 3 from the lien of the deed of trust securing the same; and these defendants aver and state that at the same time the said defendant, Hyde, made and executed two promissory notes, one for the sum of four thousand dollars and the other for the sum of six thousand dollars, which were made payable to the order of said Michael Traver three years after the date thereof, with interest, payable semi-annually, at the rate of 8 per cent. per annum, & which were duly endorsed by the said Michael; and that said Hyde also executed a deed of trust upon said block 2 to this defendant, Henry L. Hammond, as trustee, in the usual and ordinary form, to secure the payment of said four thousand dollar note, and also executed another deed of trust in like form to secure the payment of the note for six thousand dollars; and these defendants further answer-
70 ing say that they then were and are now engaged in business in the city of Chicago as financial agents, and have been so engaged in such business under the name and description of Hammond & Bogue, and in the course of such business have made and are making loans of money on real estate security for various capitalists, and

that at the time aforesaid these defendants were the agents of one C. A. Richardson, of Massachusetts, and had funds of the said Richardson in their hands to loan. That the said Hyde applied to these defendants as such financial agents to procure a loan of money on the said notes, and these defendants, as the agents of said Richardson, loaned the sum of ten thousand dollars for and in behalf of said Richardson, and took said notes therefor, secured by the said deed of trust to this defendant, Hammond, on said block 2, and said Richardson thereby became the legal and equitable owner of said two notes. That the situation of said blocks 1 and 2 was then as follows: The said trust deed executed by said complainants and Michael Traver to said Enos Ayres was the first incumbrance thereon for the security of the two last due of the said Dickson notes, and the said deed of trust executed by said Hyde to this defendant, Henry L. Hammond, was a junior incumbrance upon said block 2 to secure the payment of the said two notes for ten thousand dollars belonging to the said Richardson.

And these defendants aver that said block 1 was and is
71 worth between twenty-five and thirty thousand dollars, and that its value could not be reasonably placed at less than twenty-five thousand dollars. And this defendant, Oswell A. Bogue, further answering for himself, denies that he, on or about the month of February, A. D. 1875, or at any other time, entered into any conspiracy or confederation with said Hyde to cheat or defraud said complainant, and this defendant denies that any fraudulent arrangement was made under which the said Dickson notes and trust deed were placed in the hands of this defendant as the apparent purchaser of the same. And this defendant says it is not true that said last two of said Dickson notes were paid, or have ever been paid by said Hyde, or by any person, except that said Hyde did pay a sufficient sum upon said last two of said Dickson notes to reduce the amount thereof to ten thousand dollars. And this defendant denies that he made representations to said Ayers that said Hyde was the owner of said block 1, as in said bill charged, although this defendant, at the time of the execution of the release of said block 2 by said trustee, hereinafter mentioned, supposed and believed said Hyde to be the owner of the equity of redemption in said block 1. And these defendants, the said Henry L. Hammond and Oswell A. Bogue, further answering, say that it is not true that the money invested in the two remaining Dickson notes was loaned to said Hyde, or that said Dickson notes were taken as collateral to a loan to him,
72 but that on or about the time when the first of said two Dickson notes became due, the said Hyde requested these defendants to allow him to pay up said notes for $6,000 and $4,000, then held by said Richardson, and to purchase the said two Dickson notes. And these defendants, acting as the agents of said Richardson, at the request of said Hyde, agreed to and did so receive payment of said $6,000 and $4,000 notes, secured by the deeds of trust to this defendant Hammond on said block 2, and this defendant Hammond released the quarter portion of said block 2 from the lien of said trust deeds, made to this defendant Hammond as trustee, there be-

ing about ten lots yet remaining not formally released, but this defendant Hammond was and is ready to release the same at any time at request of said Hyde, unless enjoined by the court. And the said Hyde, having paid up the interest on the said two Dickson notes, and a sufficient amount of the principal to reduce the same to the sum of ten thousand dollars, these defendants agreed to and did take said notes by purchase, acting for and in behalf of said Richardson, and the said Richardson is now the legal and equitable owner of the same for full value. And these defendants, as such agents, consented to extend the time of payment of said Dickson notes first becoming due for the period of one year. And these defendants, also at request of said Hyde, consented to the release of said block 2 from the lien of said trust deed to said Ayres as trustee,
73 and this defendant Bogue signed said release, joining with said trustee, but these defendants at that time supposed and believed that said Hyde was the owner of both block 1 and block 2, and knew nothing of the said agreement between said complainant and said Michael Traver and between said Michael Traver and said Hyde. And these defendants, for & in behalf of said Richardson, extended the time of payment of said Dickson note, first payable, for the term of one year; and the said Dickson notes are now in the hands and possession of these defendants as the agents of said Richardson, who is the legal and equitable owner of the same, and who paid full value therefor; and this defendant, Oswell A. Bogue, further answering for himself, says that it is wholly untrue that this defendant was a partner or associate in business with said defendant Hyde at the time of the making of the said loan on behalf of said Richardson, or at the time of the purchase by said Richardson, through this defendant and said Hammond, of the said ten Dickson notes, now held and owned by said Richardson. This defendant further says, that on or about the first day of March, A. D. 1875, the said defendant Hyde took a portion of the office of said Hammond and this defendant, in Honore block, in said city of Chicago, and has since occupied the same, and that after the said occupancy, and some time subequent to said first day of March, this defendant and said Hyde became associated in respect to the business
74 of buying and selling real estate, as agents or brokers, on commission, but that their partnership has no further extend, and has no relation to the business of said Hammond and Bogue as financial agents, nor to any other business of this defendant, or of said Hyde; and this defendant has never been in partnership in business with said Hyde prior to said first day of March.

And these defendants, the said Henry L. Hammond and Oswell A. Bogue, further answering, upon their information and belief, deny that said defendant, Hyde, made any agreement whereby the land conveyed to him in the block aforesaid was or is charged with any trust or confidence. And these defendants aver that there is a statute of this State, whereby it is provided that all declarations or creations of trusts or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing, signed by the party who is by law enabled to declare such trust, or shall

be void and of no effect. And these defendants claim the benefit of the statute, as though they had pleaded the same. And these defendants claim and insist that no agreement in writing was made by said defendant, Hyde, or by said complainants, whereby any such trust or confidence was created. And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that any other matter, cause, or thing in the said bill contained, material or neces-
75 sary to be answered unto by these defendants, and not herein well and sufficiently answered, traversed, confesssed, and avoided or denied, is true, to the knowledge or belief of these defendants.

All which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and pray to be hence dismissed with their reasonable costs & charges, etc.

HENRY L. HAMMOND.
OSWELL A. BOGUE.

FRED. C. INGALLS,
Sol. & of Counsel for Def'ts.

STATE OF ILLINOIS, } ss:
County of Cook, }

Henry L. Hammond and Oswell A. Bogue, being each duly sworn, on their respective oaths, depose and say that they have read the foregoing answer by them subscribed and know the contents thereof, and that the same is true of their own knowledge, except as to the matters therein stated on information and belief, and as to those matters they believe it to be true.

HENRY L. HAMMOND.
OSWELL A. BOGUE.

Subscribed and sworn to before me, on this 18th day of May, 1875.
[SEAL.] F. C. INGALLS,
Notary Public.

76 And thereupon, on the 8th day of October, 1875, there was filed in said cause the answer of defendants, Ayres, in words and figures following, to wit:

The separate answer of Enos Ayres to the bill of complaint of Henry J. Traver, filed against Michael Traver, this defendant, and others, on the fifth of April, 1875.

STATE OF ILLINOIS, } ss.:
County of Cook, }

In the Circuit Court of Cook County.

HENRY J. TRAVER,
vs.
MICHAEL TRAVER, JAMES C. HYDE, OSWELL A. Bogue, Enos Ayres, Henry L. Hammond, Mary Ann Pearson, Frank J. Smith, Alvin Hulbert, John Borden, William Borden, Frank J. Weidinger, N. S. Goss, Maria Show, L. C. Payne Freer, Caroline E. Jones, Mary E. Pruce, Gwynn Garnett. } In Chancery.

Defendant admits that said Michael Traver and Henry J. Traver purchased from one John Dickson, on the 19th of December, 1870, the land described in said bill of complainant, and that said Dickson then and there made, executed, and delivered his deed of said property to said Travers, and that said deed was recorded, as
77 stated in said bill. This defendant admits that to receive a portion of the purchase money for said land, said complainant and Michael Traver executed to said Dickson their four several promissory notes, dated the 19th of December, 1870, each for the sum of $5,373.67½-100, due, respectively, in two, three, four, and five years from date, with interest at eight per cent. per annum, and also executed and delivered their certain trust deed upon said premises, in and by which they conveyed said property to this defendant, as trustee, conditioned upon the payment of said promissory notes. Defendant admits that afterwards, on or about the 25th day of April, 1872, said Travers subdivided said land into lots and blocks, and entitled the same "Traver's subdivision of the east $15\frac{92}{100}$ acres of the west $30\frac{92}{100}$ acres of that part of the southeast quarter of section 23, 39, 13, lying south of Ogden avenue, or southwest plank road," and that said subdivision was divided into three blocks, as stated in said bill. Further answering, this defendant says that he has no knowledge as to whether, after said subdivision, the said Traver sold some of the lots in block 3, or as to whether, in making said sales, said Michael acted in transactions of business for both, and received all the avails thereof, or whether complainant attended to said business, and hence does not admit or deny the allegations in said bill contained in that regard, but leaves complainant to make such proofs as he is able. Further answering this defendant
78 says that he has no knowledge as to whether, on the 5th of September, 1872, complainant and said Michael Traver entered into the contract or agreement in substance that said Michael should convey to the complainant all his said interest in and to all of said block 1, and lots 21 to 28, inclusive, in block 3 of said subdivision, and should pay and obtain a release as to said described

block 1, and said last-mentioned lots from the lien of said trust deed so as aforesaid made to this defendant for the use of said Dickson, and in consideration thereof that the complainant would quit-claim and release to said Michael all the rest and residue then unsold of said subdivision, subject to said trust deed, and would also release to said Michael all complainant's interest in and to the moneys, notes, and mortgages by said Michael for and on account of said lots sold, or whether or not said Michael Traver and wife, on said 5th day of September, 1872, duly conveyed to the complainant said block No. 1 and said last mentioned lots, as stated in said bill, and leaves the complainant to make such proof as he is able. This defendant is also ignorant as to whether or not afterwards the complainant made and delivered to said Michael a deed of the unsold portions of said blocks 2 and 3, as stated in said bill, and leave the complainant to make such proof of the same as he is able.

79 Further answering, this defendant denies all knowledge of any agreements mentioned in said bill, made between said complainant and the said Michael Traver in relation to said lots or property, and says that he had no information or knowledge relating to the same until after the filing of the bill in this case.

Further answering, this defendant says that he has no knowledge, except what is contained in said bill, as to whether or not, on or about the 28th of December, 1872, said Michael made an agreement with one James C. Hyde, by which said Michael was to convey to said Hyde all his then interest in and to said subdivision, known as "Traver's subdivision," and should assign to said Hyde all notes and securities then held by said Michael as the proceeds and avails of lots in said subdivisions theretofore sold, said Hyde then agreeing, in consideration thereof, to perform all the agreements of said Michael with said complainant touching said land, said Hyde agreeing to assume and pay all the then unpaid notes due as aforesaid, and to procure the release of said block 1 and of said 8 lots in said block 3 from said trustee to this defendant, and leaves the complainant to make such proof of the same as he is able.

Further answering, this defendant says that he has no knowledge, except what is contained in said bill, as to whether said Michael and wife deeded, on the 28th day of September, 1872, by deed of conveyance to said James C. Hyde, all their remaining interest in and

80 to said Traver's subdivision, and assigned and delivered the notes and securities then held by said Michael as the proceeds of sales of lots in said subdivision, and leaves the complainant to make such proof of the allegations in that regard as he is able. This defendant is also ignorant as to whether said Hyde agreed to procure a release of said block 1 and the said 8 lots, as stated in said bill, and leaves complainant to make such proof of the same as he is able.

Further answering, this defendant admits that on or about the 8th day of February, 1873, the said Dickson uniting with him, executed a release of said 8 lots in said block 3 from the lien of said trust deed. Further answering, defendant admits that he, as trustee, united with said Dickson, the holder of the notes in ques-

tion, in a release, dated on or about the 8th day of February, 1873, to said 8 lots in block 3 upon the payment of two of said four notes, and defendant admits that he united with said Dickson in a release of all said block 3, including said lots, leaving the remaining two notes unpaid, and a lien upon said blocks 1 and 2; but this defendant avers that at that time said Dickson was the holder and in possession of all of said notes secured by said trust deed, and that said release was by this defendant executed and delivered at the request of said Dickson, who united with him in said release. Further answering, this defendant says that he has no knowledge or information, except what is contained in said bill, as to whether, in the month of February, 1875, James C. Hyde, intending to cheat and defraud the complainant, conspired with said Bogue and pro-
81 cured from said Dickson two unpaid notes of the complainant and the said Michael Traver, and the trust deed given to secure the same, and has no knowledge as to how said Bogue became in possession of said notes, or of arrangements between said Bogue and Hyde and Traver, and does not admit or deny the same, but leaves the complainant to make such proof of the allegations contained in said bill in that regard as he is able; and whether or not said Bogue had knowledge of the contract of said Hyde, or whether he was bound to procure a release of said block 1, this defendant has no knowledge or information, except what is contained in said bill. Further answering, this defendant says that the facts in regard to his executing of the release mentioned in said bill of complaint of said block 2 are as follows, and not otherwise: That on or about the 20th day of January, 1875, the said Hyde came to this defendant, at his office in Chicago, and requested this defendant to go to the bank of Preston, Keen & Co., where this defendant supposed said remaining notes given by said Travers to said Dickson, and secured by said trust deed, had been sent for collection, as represented by said Hyde, and to execute a release which had been signed by said Dickson releasing all said property conveyed by said trust deed; that this defendant, on arriving at said bank, found there the release heretofore attached and marked "Exhibit A," and the note next maturing; that this defendant, knowing that there was still another note, not then in the possession of said bank, which said trust deed was given to secure, refused to execute said release;
82 that said Hyde then and there represented to this defendant that he was the owner of all the land said trust deed was a lien upon, and that this defendant could safely execute said release and that said block one would remain as security for the amount remaining due secured by said trust deed; that afterwards, and on or about the 19th day of February, 1875, said Bogue came to the office of this defendant, having in his possession, properly endorsed to him the remaining unpaid notes secured by said trust deed, and represented to this defendant that he was sole owner of the same, and requested this defendant that he should execute a release of the lien of said trust deed upon said block 2; that this defendant examined then and there said notes, and finding that they were properly endorsed and in possession of said Bogue, he, at the request of said Bogue,

made, executed, and delivered to him the release asked for by said Bogue, a copy of which is hereto attached, marked "Exhibit B," upon condition that said Bogue should execute and acknowledge the same with him, and that said Bogue then and there signed his name to, and acknowledged said release deed, in which he stated that he was the owner of said notes. This defendant further answering, says that at the time of the execution of said release he had no knowledge or information whatever as to any of the transactions, contracts or agreements set forth in said bill between the said Travers and between Michael Traver and the
83 said Hyde, or between said Hyde and the said Bogue, and that he believing the said Bogue to be the sole owner of said notes, released said block 2 at his request. Defendant says that in executing and delivering said release deed he acted in good faith, believing that said Bogue was the sole owner of said notes, and the only person in any way interested in them. Further answering this defendant denies each and every allegation contained in said bill not hereinbefore admitted or denied. Further answering this defendant denies that the complainant is entitled to the relief, or any part thereof, demanded in said bill of complaint, and prays the same advantage of this answer as if he had pleaded or demurred to said bill of complaint, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

ENOS AYRES,
By MONROE, BISBEE & BALL,
His Solicitors.

HENRY S. MONROE, *Of Counsel.*

And thereupon, on the 29th day of December, 1875, the following proceedings were had and entered of recoed in said cause, to wit:

84 HENRY J. TRAVER *vs.* MICHAEL TTAVER *et al.* } 15758. 1067. Bill.

On motion of solicitors for the complainant it is ordered that leave be, and it hereby is, granted said complainant to file a supplemental bill of complaint in said cause. To the granting of which leave the defendants by their solicitor except.

And thereupon on the 28th day of January, 1876, there was filed in said cause a certain supplemental bill in words and figures following, to wit:

In the Circuit Court of Cook County, State of Illinois.

HENRY J. TRAVER *vs.* MICHAEL TRAVER & others. } In Chancery. For Injunction and Relief.

To the Honorable E. S. Williams, judge of said court in chancery sitting.

85 Humbly complaining, showeth unto your honor your ora-

tor, Henry J. Traver, complainant in the above entitled suit. That heretofore, to wit, on or about the 5th day of April, A. D. 1875, he duly exhibited and filed in this honorable court his certain bill of complaint against Michael Traver, James C. Hyde, Oswell A. Bogue, Enos Ayres, Henry L. Hammond, Mary Ann Pearson, Frank J. Smith, Alvin Hulbert, John Borden, William Borden, Frank J. Weidinger, R. S. Goss, Maria Show, L. C. Payne Freer, Caroline E. Jones, Mary E. Bruce, and Gwynne Garnet, wherein and whereby your orator, among other things, represented to this honorable court that he was the owner of certain real estate in his said bill described. That the same had been subject, with other real estate mentioned in said bill, to the lien of a certain incumbrance or trust deed made to said defendant, Enos Ayres, as trustee; that, for a valuable consideration, the said defendant, James C. Hyde, had contracted and agreed to pay and satisfy the debt secured thereby, and caused to be released from the lien of said trust deed the said real estate of your orator. That said defendant, James C. Hyde, fraudulently conspiring with said defendant, Oswell A. Bogue, for the purpose of cheating and defrauding your orator, had falsely represented to said defendant, Enos Ayres, that
86 he, said Hyde, was the owner of the said real estate of your orator, and that said Oswell A. Bogue had pretended to be the owner of all the unpaid notes secured by said trust deed, and by means of such pretenses had procured from the said Enos Ayres, a release of all and singular the real estate covered by said trust deed, excepting the said real estate of your orator, and this without satisfying or cancelling any part of said unpaid notes, and that said defendant Hyde and Bogue falsely set up and claim that by means of their said fraudulent acts and doings, they had shifted and settled the entire unpaid portion of said mortgage debt upon your orator said real estate, contrary to equity and good conscience, and that the same so spread of record, as by the said original bill of complainant, remaining on file and of record in this honorable court, and which is hereby referred to, made part hereof, and for all the purposes of this supplemental bill hereby adopted to like extent and same effect as if the same were herein fully copied and set out, will more fully and at large appear. Your orator further shows that upon the filing of the said bill of complaint your honor granted a temporary injunction, of which the said defendant, Hyde, Bogue, and others, as will more fully and at large appear by the order, and which of this honorable court still remaining of record herein. That the said defendant James C. Hyde, Oswell A. Bogue, Henry L. Hammond, and Enos Ayres have duly
87 answered your orator's said bill, as by their respective answers on file herein will more fully and at large appear. That the said suit in chancery is still pending, and undetermined in this honorable court. That by leave of this court your orator now exhibit*ed* this his supplemental bill to your honors, and respectfully represents, that it is pretended, set up, and insisted upon by the respective answers of said defendant, Hyde, Bogue, and Hammond. That the said promissory notes mentioned in the original bill filed

herein were and are the property of one Charles A. Richardson, of the State of Massachusetts. That your orator did not know of such claim or pretence until long after the filing of his original bill herein. That your orator, upon information and belief, denies that said Richardson is or ever has been, the owner of said notes, and to this end your orator shows, and upon information and belief charges that said pretence of said defendant is a fraudulent device now set up to evade and avoid the effect of the injunction granted herein to prevent the doing of equity in this cause, and your orator charges, set up, and insist that said defendant Oswell A. Bogue is estopped from denying that he was and is the owner of the said promissory note. For your orator shows before and at the time of obtaining the said release deed from said defendant Enos Ayres and for the purpose of procuring the same, the said Bogue represented to said Ayres that he
88 was the owner of said note, and that he so stated and acknowledged under his hand and seal, as will more fully appear by the said release deed, a copy of which is hereto attached, marked "Exhibit A," and made part hereof. And your orator set up [and] insist upon said charges; that said Hyde is also estopped from denying that said Bogue was and is the owner of said notes, for, as your orator shows and charges, before and at the time of procuring the said release deed from said Enos Ayres, and for the purpose of obtaining the same, the said Hyde represented to said Ayres that said Bogue was the owner of said notes, all of which the said Enos Ayres believed and acted upon, and by reason thereof executed the said release deed. And your orator sets up, charges, and insists that the said Charles A. Richardson is estopped from denying that said Oswell A. Bogue was and is the owner of said notes by reason of the representation made by said Bogue while acting as his agent, and by reason of the said release deed, signed and sealed by said Bogue while holding the said notes as aforesaid. And your orator, upon information and belief, charges that said promissory notes at the time of the execution of said release were and still are the property of either said Hyde or said Bogue, and that said Charles A. Richardson had not, and has not, any interest therein. But if it should appear that said Hammond and Bogue, as the financial
89 agent of said Richardson, did purchase the said notes with the money of said Richardson, then your orator shows and charges that said Richardson had full knowledge of all the rights and equities of your orator in the premises, and that he, said Richardson, became and was a party to the fraud attempted upon your orator. That he has conspired and confederated with said Hyde and Bogue to cheat and defraud your orator by setting up a claim to said notes, and by attempting to fix upon your orator said real estate the lien of said entire debt, contrary to equity. And your orator charges that if said Richardson has at any time become the purchaser of said notes, that he has purchased the same with full knowledge that the said Hyde was in equity bound to pay the same, and that the same should in equity be surrendered up to your orator canceled, and if he has so purchased the same, he has done so for the fraudulent purpose of aiding the said Bogue and Hyde in

cheating and defrauding your orator. And your orator shows that said Richardson is not legally or equitably *or* innocent holder of said notes, but, on the contrary, whatever interest he may appear to have therein has been acquired by him with full knowledge that in equity they were to be satisfied out of the property not owned by your orator, and which has been so fraudulently released by the acts and doings of his said Richardson's agent, said defendant, Bogue.

Your orator further shows that since the filing of the original bill herein, to wit, on or about the 28th day of December, A. D. 1875, the said Charles A. Richardson, conspiring and confederating with the said Hyde and Bogue to injure and defraud your orator, and falsely pretending to be an innocent holder of said notes and trust deed, did, in the circuit court of the United States for the northern district of Illinois, commence his certain suit of assumpsit against the said Michael Traver and your orator upon the said two promissory notes, which said suit is still pending and undetermined in said court, your orator having been duly served with process therein. That on said 28th day of December, A. D. 1875, the said Richardson also commenced in the said circuit court of the United States for the northern district of Illinois his certain suit in chancery against your orator and said Michael Traver and others, which said suit in chancery is for the foreclosure of said trust deed, and your orator has been duly served with summons in said last mentioned suit. That both said suits in said circuit court of the United States are still pending and undetermined therein, and the said Richardaon, by his attorney, Frederick C. Ingalls, threatens to prosecute the said suit against your orator, and will do so unless restrained by order of this honorable court. And your orator shows that the said Richardson and his said attorney have had full notice of all the rights and equity of your orator in the premises, as stated in your orator's original bill filed herein, that they have each had full notice of all the proceedings in this suit in this honorable court, and your orator charges that the commencement of said suit in said United States court is for the purpose of aiding the said defendants, Bogue and Hyde, in the prosecution of their fraudulent purposes to cheat, injure, and defraud your orator. That to this end and for this purpose the said Richardson has confederated and conspired with said Bogue and Hyde, and is acting with them in the prosecution of their illegal plans and purposes. And your orator shows that since the filing of his original bill herein, the last of said notes made by your orator and said Michael Traver has become due and payable by its terms, and that now the entire debt secured by said trust deed is due and payable. And your orator charges that in reality and in fact said Hyde has paid said notes or otherwise secured the same, and that the pretended holding of the same uncancelled and unpaid is a pretence and a fraud, and done for the purpose of injuring your orator, and that for this purpose the said Richardson and Bogue have conspired with him, the said Hyde. And your orator claims as to said notes that in equity and as to your orator and as to his said property, the same have been, and are, paid, and should be surrendered

to your orator cancelled. But if it should so appear that the same have not been paid, then your orator claims that all the real estate originally conveyed for the security of said notes
92 excepting and saving the real estate of your orator, shall be first sold and applied towards the payment of said notes; that all said real estate, excepting that of your orator, shall be first exhausted before your orator or his said property shall be liable to pay any part of said notes, and to this end your orator prays that the said release deed executed by said Bogue and Ayres be set aside and for nothing esteemed, and all the real estate included therein, by order of this court, made subject to the said trust deed and the lien thereof, and the holder thereof required to first exhaust the said property before selling any part or portion of your orator's property. But if by reason of the said release deed, and the record thereof, the said property or any part or portion thereof has been conveyed to, and is held by, innocent purchasers, so that the original lien of said trust deed cannot be enforced against the same, then your orator claims that said defendants, Bogue and Ayres, shall be decreed to pay the unpaid portion (if any) of said notes made by your orator and said Michael Traver, and to procure the same to be surrendered to your orator to be cancelled and the said trust deed discharged. To the end, therefore, that equity may be done, your orator prays that said Charles A. Richardson may be made a party defendant hereto, that he may be duly summoned to appear and answer all and singular the matters and things contained
in the original bill filed herein and in this supplemental bill
93 thereto, but not on oath, the oath of said defendant being hereby expressly waived, and that a hearing may be had and your orator may be released by such decree of this honorable court as to equity shall appertain. That the said Richardson shall be decreed by this court to surrender up to your orator the said notes. That in the meantime your honors grant to your orator a writ of injunction enjoining and restraining the said Charles A. Richardson, his agents, and attorneys, from prosecuting the said suit in the said circuit court of the United States, and from prosecuting any and all suits at law or in equity against your orator upon the said notes or for the foreclosure of said trust deed, until the further order of this court in the premises. That all the defendants made in and by the original bill filed herein be ruled to answer this supplemental bill not on oath. That all the relief prayed for in said original bill be granted to your orator by your *orator*, and all such other and further relief as your orator's case may require and to your honors shall seem meet, and as in duty bound your orator will ever pray, &c.

HENRY J. TRAVER.

McCOY & PRATT, *Solicitors.*

STATE OF ILLINOIS, }
Cook County, } *ss.*:

Henry J. Traver, being first duly sworn, doth depose and
94 say, he is the complainant whose name appears subscribed to the foregoing supplemental bill, that he has heard the

same read, and knows the contents thereof, and that the same is true of his own knowledge, except when therein stated upon information and belief, and as to such matters he believes the same to be true, and further says not.

HENRY J. TRAVER.

Subscribed and sworn to before me, this — day of January, 1876.
[SEAL.] LUTHER L. HIATT,
Notary Public.

"EXHIBIT A."

Know all men by these presents, that I, Enos Ayres, trustee, & I, Oswell A. Bogue, legal holder of the unpaid notes of the county of Cook and State of Illinois, for and in consideration of one dollar to us in hand paid, and for other good and valuable considerations, the receipt whereof is hereby confessed, do hereby grant, bargain, remise, convey, release, and quit-claim unto Henry J. Traver, Clarissa A. Traver, Michael Traver, and Mary Jane Traver, of the county of Cook and State of Illinois, all the right, title, interest, claim, or demand whatsoever we may have acquired
95 in, through, or by a certain indenture or trust deed, bearing date the nineteenth (19th) day of December, A. D. 1870, and recorded in the recorder's office of Cook county and State of Illinois, in Book 655 of Deeds, page 517, to so much the premises therein described, to wit, that part of the premises now known as block two (2) in Traver's subdivision of the east fifteen and ninety-two one hundredths ($15\frac{92}{100}$) acres of the west thirty and ninety-two one hundredths ($30\frac{92}{100}$) acres of that part of the southeast quarter of section twenty-three (23), town. thirty-nine (39) north of range thirteen (13), east of the third (3d) principal meridian, lying south of Ogden avenue, on the southwestern plank road, situated in the county of Cook and State of Illinois. The release is not to affect the balance of the property covered by the above-mentioned trust deed, which is still held for notes now remaining unpaid, and which said trust deed was made to secure four (4) certain promissory notes, bearing even date with said deed, for the sum of twenty-one thousand four hundred ninety-four dollars and seventy cents.

Witness our hands and seals, this twenty-ninth (29th) day of January, A. D. 1875.

(Signed) ENOS AYRES, *Trustee.* [SEAL.]
(Signed) OSWELL A. BOGUE, [SEAL.]
Legal Holder of Notes.

STATE OF ILLINOIS, } *ss:*
Cook County, }

I, William Palin, a notary public in and for said county,
96 in the State of aforesaid, do hereby certify that Enos Ayres and Oswell A. Bogue, personally known to me as the same persons whose names are subscribed to the foregoing deed, appeared before me this day, in person, and acknowledged that *he* signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal, this 29th day of January, A. D. 1875.

[SEAL.] (Signed) WILLIAM PALLEN,
Notary Public.

No. 14,712. Filed for record this 19th day of Feb'y, A. D. 1875.
(Signed) JAMES STEWART, *Recorder.*

The above is a true copy of a release deed, recorded in the recorder's office, of Cook county, Illinois, in Book 419 of Records, page 384.

Chicago, December sixth, 76th) 1875.

GILLMORE, POLLOCK & CO.,
Successors to Williams & Thielcke.

And therefore, on the 6th day of May, 1876, a certain demurrer of the supplemental bill of complaint was filed in said cause, and a certain order made and entered of record, which said demurrer and order are in the words and figures following, to wit:

97 *The Demurrer of Charles A. Richardson, defendant, to the Supplemental Bill of Complaint of Henry J. Traver, complainant.*

In the Circuit Court of Cook County. In Chancery.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth:

1. That said complainant's supplemental bill, filed in this honorable court, alleges that this defendant, prior to the filing of said supplemental bill, instituted a suit in equity in the circuit court of the United States, for the northern district of Illinois, to foreclose the deed of trust mentioned in said supplemental bill, and also a suit at law in assumpsit upon the promissory notes secured by said deed of trust; that said complainant and other parties were made defendants in both said suits in said circuit court of the United States, and were duly served with process in each of said suits prior to the filing of said supplemental bill; that this defendant

98 is a citizen of the State of Massachusetts, and that said suits in said circuit court of the United States were pending and undetermined at the time of the filing of said supplemental bill; that it appears by said supplemental bill that the said circuit court of the United States had full jurisdiction in said suits in equity and at law prior to the filing of said supplemental bill, and this defendant is advised that, inasmuch as the said circuit court of the United States had and obtained jurisdiction as aforesaid, this court has not, as appears by said supplemental bill, any jurisdiction to entertain the said supplemental bill as against this defendant. 2.

For that said supplemental bill seeks to enjoin this defendant from proceeding in suits already pending in the circuit court of the United States for the northern district of Illinois, and seeks relief against this defendant in respect to matters over which the said circuit court of the United States, sitting in equity, had full jurisdiction at and before the time of the filing of said supplemental bill. 3. For that the only matter or thing set forth and alleged as the ground for filing said supplemental bill is the institution of the two suits, one in equity and one at law, by this defendant, in the circuit court of the United States aforesaid, since the time of the filing of the original bill in this cause, against the further prosecution of which this defendant is thereby sought to be enjoined, and this defendant is advised that this honorable court has no
99 jurisdiction to enjoin proceedings at law or in equity in said circuit court of the United States. Wherefore this defendant demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to said supplemental bill, or any of the matters and things therein contained, and prays to be hence dismissed with reasonable costs, &c.

F. C. INGALLS,
Solicitors for Defendant, C. A. Richardson.

Order. May 6, '76.

HENRY J. TRAVER *vs* MICHAEL TRAVER *et al.* } 15758. 1067. Bill and Supplemental Bill.

This day came on to be heard the demurrer of Charles A. Richardson (one of the defendants in the supplemental bill of complaint in said cause) to said supplemental bill of complaint, which was argued by counsel, and the court, being now fully advised in the premises, doth sustain said demurrer, and doth dismiss said supplemental bill of complaint out of this court for want of equity. And on motion of solicitor for complainant, it is ordered that leave be, and it hereby is, granted the complainant to amend the original bill of complaint herein, by making Charles A. Richardson a party defendant.

100 And therefore, on the 16th day of December, 1876, there was filed in said cause a certain replication and amended bill of complaint in words and figures following, to wit:

The Replication of Henry J. Traver, Complainant, to the Answers of James C. Hyde, Oswell A. Bogue, Enos Ayres, Michael Traver.

Circuit Court, Cook County.

HENRY J. TRAVER *vs.* JAMES C. HYDE AND OTHERS. } In Chancery. For Injunction.

This repliant, saving and reserving to himself all manner and ad-

vantage of exception to the many manifold errors and insufficiences of the said several answers of the said several defendants, and each of them, for replication thereto, says: That he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in law to be answered unto by the said several defendants, and each of them, and that the several answers of the said defendants, and each of them, are very uncertain, evasive, and insufficient in law to be replied unto by this repliant without this, that any other matter or things in the said answers, and each of them, contained materially, or effectually in the law to be replied unto, confessed or avoided,
101 traversed or denied, is true, all which matter and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays, as in and by his said bill he has already prayed, &c.

HENRY J. TRAVER,
Complainant.
McCOY & PRATT,
Solicitors.

Amendment to Bell of Complaint.

Circuit Court, Cook County.

HENRY J. TRAVER *vs.* MICHAEL TRAVER *et al.* } In Chancery. For injunction and relief.

And now comes the said complainant, by McCoy & Pratt, his solicitors, and by leave of the court first had and obtained, amends his said bill of complaint filed herein as follows, to wit: By inserting after the charging part of said bill and before the prayer thereof, to wit, after the thirteenth page of said bill and where on the margin thereof is written in the word "amendment," the following, to wit: Your orator further shows unto your honors that the said defendants, Hammond, Bogue, and Hyde, now give out and assert that the said notes of your orator and said defendant Michael Traver have never been paid or in any manner satisfied, and that neither they, nor any of them, are the owners and holders thereof; but on the contrary, that one Charles A. Richard-
son, who is said to be a citizen of Massachusetts, is the owner
102 and holder thereof. And it is now pretended by said defendant that the said Hammond and Bogue, not for themselves or either of them, but for and on behalf of said Charles A. Richardson, and as his agent, purchased the said notes and trust deed made by your orator and said Michael Traver, and that the said Richardson is now, and at all times since the possession of said notes was obtained from said Dickson has been, an innocent and *bona fide* holder of said notes for value, and that he will proceed to collect the same out of your orator, or out of his said property. All of which pretenses your orator, upon information and belief, charges to be false and fraudulent, and made for the express and sole purpose of defrauding your orator in the premises. And your orator shows and charges that whatever title to or interest in the said notes

and trust deed which said Richardson has at any time acquired was acquired by him through and by his agent, Oswell A. Bogue, aforesaid; that said Richardson has never had possession of said notes or said trust deed, or either of them; that if the money or credit of said Richardson was in any manner and in the purchase of said notes, the same was so used by said Bogue without the knowledge of said Richardson at the time. And your orator charges that said Richardson is chargeable with full notice of the fraudulent acts and doings of his said agent in the premises, and cannot now set up or insist upon any greater equity in the premises than the said
103 Bogue himself could, and that the said Richardson is bound by the acts, doings, and declarations of the said Bogue. And your orator shows that for the purpose of obtaining the said release from the said Enos Ayers, the said Bogue presented to said Ayers the said two notes, claiming that he had purchased the same from said Dickson, and jointly with said Ayers signed and sealed the said release deed; that in so signing and sealing the same he, under his hands and seal, expressly stated and represented that he was the legal holder of the notes secured by said trust deed; that the said notes were at the time properly endorsed by said Dickson, so as to convey to and vest in the said Bogue the title thereto, and that by means of the possession of said notes by said Bogue, and of his claim of personal ownership thereof, and of the false and fraudulent representation of said Bogue and Hyde that said Hyde was the owner of the equity of redemption in and to all property covered by said trust deed, including the said block No. one (1), the property of your orator, the said Bogue and Hyde procured the said release deed from the said Ayers. And your orator shows that said release deed was never delivered to the grantees therein named, to wit, your orator and said Michael Traver, or either of them, or to any person for them or either of them, but was taken by said Hyde and Bogue, or one of them, and fraudulently placed on record. And your orator charges that the said release deed was never operative or in force, for the reason that the same was never delivered. A copy of said release deed is attached to the supplemental bill
104 filed herein as an exhibit and marked "A"—the same is hereby referred to and made a part of this amended bill. And your orator charges, sets up, and insists that the said defendants, Hyde and Bogue, and the said Charles A. Richardson, are each and all estopped from denying that the said Oswell A. Bogue was at the time of the execution of the said release deed the owner of the said promissory notes, and are each and all estopped from asserting that the said Charles A. Richardson was or is the owner of said notes or either of them. And upon the trial hereof your orator will insist, by reason of the execution by said Bogue of the said release deed, and by reason of the false and fraudulent representation of the said Hyde and Bogue, because of which the said Ayres executed the said release deed as aforesaid, that all the said parties, to wit, said Hyde, Bogue, and Richardson are estopped from setting up or insisting upon any claim either to said notes or to said trust deed as against your orator or your orator's said property. And

your orator charges that said Charles A. Richardson is confederating and conspiring with the said Hyde and Bogue to cheat and defraud your orator in the premises. That through his said agent, the said Oswell A. Bogue, he is threatening to prosecute the collection of said notes against your orator, and to foreclose the said trust deed against your orator's said property. And your orator, in addition to the prayer of his said original bill filed herein, prays
105 that said Charles A. Richardson may be made a part- defendant hereto. That he may be duly summoned and required to answer all and singular the matter and things in the original and this amended bill stated and set forth, but not on oath, his oath being hereby expressly waived. That he may be enjoined and restrained from prosecuting the said note or trust deed, from selling or encumbering the same, or transferring the same, and upon a final hearing hereof he may be decreed to surrender and deliver up the said notes cancelled to your orator. That upon a final hearing hereof, your orator said block one may be decreed to be released from the lien of said trust deed, and the said notes decreed to be cancelled as against your orator, and for all such other and further relief as to equity may deem meet and your orator's case may require. And as in duty bound your orator will ever pray, &c.

HENRY J. TRAVER.

McCOY & PRATT,
Solicitors.

STATE OF ILLINOIS, } ss:
Cook County, }

Henry J. Traver being first duly sworn doth depose and say he has heard the foregoing amended bill read, and knows the contents thereof, and that the matters and things therein stated are true in substance and in fact, and further says not.

HENRY J. TRAVER.

106 Subscribed and sworn to before me, this 10th day of May, A. D. 1876.

[SEAL.] LORIN GRANT PRATT,
Notary Public.

And therefore, on the 18th day of December, 1876, there was filed in said cause a certain plea to amended bill, and a certain petition and bond for removal to the United States circuit court, which said plea, petition, and bond are in the words and figures following, to wit:

The Plea of Charles A. Richardson, one of the Defendants, to the Amended Bill of Complaint of Henry J. Traver, Complainant.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County, in chancery.

This defendant, by protestation, not confessing or acknowledging

all or any of the matters and things in said complainant's amended bill of complaint mentioned and contained to be true, in such manner and form as the same are therein set forth and alleged, for plea to the whole of said amended bill, saith that before the filing
107 of the said amended bill in this court, and on the twenty-eighth day of December, A. D. 1875, this defendant exhibited his bill of complaint in the circuit court of the United States for the northern district of Illinois, in chancery, against the said complainant-, Henry J. Traver and said Michael Traver and other parties, as defendants, to foreclose the deed of trust mentioned and referred to in the amended bill of complaint in this cause, and praying that an account might be taken of the amount due to this defendant for principal and interest on the promissory notes secured by said deed of trust remaining unpaid from said Henry J. Traver and Michael Traver; that said amount so due might be found and determined by said circuit court of the United States, and that in default of the payment thereof that the land and premises described in said deed of trust, except such part thereof as had been released from the lien of said deed of trust, might be sold under the order and decree of said last-mentioned court, and that the said Henry J. Traver and the other defendants to said bill might be barred and foreclosed of all right and equity of redemption therein; that it was alleged in said bill, among other things, that this defendant, the complainant therein, was a resident and citizen of the State of Massachusetts, and that said Henry J. Traver, Michael Traver, and the other defendants thereto, were residents of said northern district of Illinois, and citizen- of said State of Illinois; that said
108 John Dickson, to whom the notes secured by said deed of trust were made payable, was, at the time of the execution and delivery of said notes to him, and thence continued, a resident of Cincinnati and a citizen of the State of Ohio; that the first two of said notes, due respectively in two and three years after the date thereof, were paid in the hands of said John Dickson, the payee thereof; that the two remaining notes, due respectively in four and five years after the date thereof, were purchased by this defendant from said Dickson, for a good and valuable consideration, on or about the 15th day of January, A. D. 1875, and by said Dickson at that time assigned, endorsed, and delivered to this defendant, who thereby then became, and has since continued, the legal and equitable holder and owner of said two last-mentioned notes; that said notes remained wholly unpaid, and that there was justly and equitably due to this defendant from said Henry J. Traver and Michael Traver, on said two last-mentioned notes secured by said deed of trust, the sum of ten thousand seven hundred and forty-seven and $\frac{35}{100}$ dollars for principal, together with interest as provided in & by said notes. And this defendant further says that process of subpœna in chancery thereupon issued out of said circuit court of the United States on said bill, which was duly served on said Henry J. Traver and Michael Traver, on the twenty-ninth day of December, A. D. 1875, in said northern district of Illinois, and that said suit in equity in said circuit court of the United States has ever since been,

and still is, pending therein and undetermined and undismissed. And this defendant further says that at the time of his purchase of said notes from Dickson, and of the filing of his said bill in said circuit court of the United States, he was, and still remains, a citizen and resident of said State of Massachusetts; that said John Dickson, the original payee of said notes, was, at the time of the execution of said notes, and ever since has been, a resident and citizen of said State of Ohio, and that said complainant, Henry J. Traver, then was, and ever since has been, a resident and citizen of said State of Illinois, and that none of the defendants to said bill of complaint, filed by this defendant in said circuit court of the United States, are, or were at the time of the filing of said bill of complaint by this defendant, citizens of said State of Massachusetts. And this defendant is advised that said circuit court of the United States had jurisdiction of the matters and things concerning which the said complainant, Henry J. Traver, has exhibited his said amended bill in this cause against this defendant, and also had jurisdiction of the said complainant, Henry J. Traver, in person at and before the time of the filing of said amended bill in this cause. All of which said several matters and things this defendant doth aver, and pleads the said bill and proceedings in said circuit court of the United States in bar of the jurisdiction of this court on said amended bill as against this defendant, and demands the judgment of this honorable court whether he shall be put to make any further or other answer thereto, and prays to be hence dismissed, with his costs and charges in this behalf sustained.

CHARLES A. RICHARDSON,
By F. C. INGALLS, *His Solicitor.*

F. C. INGALLS, *Sol'r & of Counsel.*

STATE OF ILLINOIS, } ss:
County of Cook, }

Frederic C. Ingalls, of said county, being duly sworn, says that he is the attorney and solicitor of Charles A. Richardson, the defendant named in the foregoing plea; that he has read said plea and knows the contents thereof, and that the same and the matters therein set forth and stated are true in substance and fact.

FREDERIC C. INGALLS.

Subscribed and sworn to before me, on this 18th day of December, 1876.

JACOB GROSS, *Clerk.*

Petition.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County. In Chancery.

The petition of Charles A. Richardson, one of the defendants, to the amended bill of complaint of Henry J. Traver, complainant.

To the Honorable Erastus S. Williams, judge of said court.

Your petitioner, Charles A. Richardson, respectfully

shows that he is one of the defendants to the amended bill of complaint of said Henry J. Traver, complainant; that said complainant first sought to make your petitioner a party defendant in said suit by filing a supplemental bill therein on the twenty-eighth day of January, A. D. 1876, to enjoin your petitioner from prosecuting a suit in equity and at law against said complainant then pending in the circuit court of the United States for the northern district of Illinois; that your petitioner has never been served with process in this cause, but your petitioner filed a demurrer to said supplemental bill, alleging the prior jurisdiction of said circuit court of the United States, and denying the jurisdiction of this honorable court as to your petitioner, and its right to enjoin the prior proceedings of your petitioner in said circuit court of the United States, which demurrer was sustained, and said supplemental bill dismissed by this honorable court on the sixth day of May, A. D. 1876. And thereupon said complainant, by leave of court, filed an amendment to his original bill in this cause, and made your petitioner a party defendant thereto; that your petitioner filed his plea to said amended bill alleging the prior jurisdiction of said circuit court of the United States and denying the jurisdiction of this court as to this defendant on the 18th day of December, A. D. 1876, and that there has been no term of this court since the filing of said amended
112 bill, and since your petitioner was made a party defendant in this suit when said cause could be tried, no appearance or answer having been made therein by your petitioner, except as above stated. Your petitioner further shows that the matter in dispute in this suit exceeds, exclusive of costs, the sum of five hundred dollars. That at and before the time your petitioner was made a party defendant in this suit, he was, and still is, a resident and citizen of the State of Massachusetts, and the said Henry J. Traver and all the other parties to said suit were, and still are, residents and citizens of the State of Illinois, and are none of them citizen- of said State of Massachusetts. That there is a controversy in said suit wholly between your petitioner, a citizen of said State of Massachusetts, and the said Henry J. Traver, a citizen of said State of Illinois, which can be fully determined as between them. Wherefore your petitioner prays that this suit may be removed from this court into the said circuit court of the United States for the northern district of Illinois.

CHARLES A. RICHARDSON.

F. C. INGALLS,
Sol'r & of Counsel.

Bond.

Know all men by these presents, That we, Charles A. Richardson, of the city of Boston, in the State of Massachusetts, and Frederic C. Ingalls, of the city of Chicago, in the State of Illinois, are held and firmly bound unto Henry J. Traver, of the county of
113 Cook and State of Illinois, in the penal sum of one thousand dollars, to the payment of which we hereby bind ourselves, our executors and administrators, jointly and severally, firmly by

these presents. Witness our hands and seals, this eighteenth day of December, A. D. 1876.

The condition of the above obligation is such, that whereas, in a certain suit in the circuit court of Cook county, in the State of Illinois, in chancery, wherein Henry J. Traver is complainant, and Michael Traver, James C. Hyde, Henry L. Hammond, Oswell A. Bogue, Enos Ayres, Mary Ann Pearson, Frank J. Smith, Alvin Hulbert, John Borden, William Borden, Frank J. Weidinger, H. S. Goss, Maria Shaw, L. C. P. Freer, Caroline E. Jones, Mary E. Bruce, Gwynne Garnett, and the said Charles A. Richardson are defendants, the said Charles A. Richardson has filed his petition for the removal of said suit from said circuit court into the circuit court of the United States for the northern district of Illinois. Now, if the said Charles A. Richardson shall enter in said circuit court of the United States, on the first day of its session next hereafter, a copy of the record in said suit, and shall pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in force.

CHARLES A. RICHARDSON. [SEAL.]
FRED. C. INGALLS. [SEAL.]

114 And thereupon, on the 26th day of December, 1876, the following proceedings were had and entered of record in said cause, to wit:

Bill and Amended Bill.

HENRY J. TRAVER *vs.* MICHAEL TRAVER, JAMES C. HYDE, OSWELL A. BOGUE, Enos Ayres, Henry L. Hammond, Mary Ann Pearson, Frank J. Smith, Alvin Hulbert, John Borden, Frank J. Weidinger, N. S. Goss, Maria Shaw, L. C. Paine Freer, Caroline E. Jones, Mary E. Bruce, Gwynne Garnett, and Charles A. Richardson.	15758.	578.

This day came the said defendant Charles A. Richardson, by F. C. Ingalls, Esq., his solicitor, and on reading the petition of said *said* defendant filed herein, on the 18th day of December, A. D. 1876, for the transferring of said cause into the United States circuit court for the northern district of Illinois. And the said defendant offering as surety a bond in the penal sum of one thousand dollars, with Frederic C. Ingalls as surety, conditioned that said defendant will enter into said circuit court of the United States, on the first day of its next session, copies of the process issued in said cause. And the court being fully satisfied with the surety offered, doth order, that said cause be, and it is hereby, transferred to said United States circuit court for the northern district of Illinois, according to the act of Congress in such case made and provided.

115 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Jacob Gross, clerk of the circuit court of Cook county, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of all papers filed & proceedings had and entered of record in a certain cause lately pending in said court on the chancery side thereof, between Henry J. Traver, complainant, and Michael Traver *et al.*, defendants. In witness whereof, I hereunto set my hand and affix*ed* the seal of said court at Chicago, in said county, this eleventh day of January, 1877.

[SEAL.] JACOB GROSS, *Clerk.*

Endorsed: Filed M'ch 2, 1877. Wm. H. Bradley, cl'k.

116 And on, to wit, the seventh day of April, A. D. 1877, in the record of the proceedings of said court in said entitled cause, before the honorable Henry W. Blodgett, district judge, appears the following entry, to wit:

HENRY J. TRAVER
vs. } In Chancery.
MICHAEL TRAVER *et al.*

On motion, leave is given complainant to amend the bill of complaint by making new parties defendants herein.

And on, to wit, the tenth day of April, A. D. 1877, in the record of the proceedings of said court in said entitled cause, before the Honorable Henry W. Blodgett, district judge, appears the following entry, to wit:

HENRY J. TRAVER
vs. } In Chancery.
MICHAEL TRAVER *et al.*

On motion of F. C. Ingalls, Esq., solicitor, it is ordered by the court that the order of the court entered herein on the seventh day of April, instant, granting leave to complainant to amend the bill herein be set aside and vacated.

117 Afterwards, to wit, on the seventeenth day of April, A. D. 1877, in the record of the proceedings of said court in said entitled cause, before the Hon. Thomas Drummond, circuit judge, appears the following entry, to wit:

HENRY J. TRAVER
vs. } In Chancery.
MICHAEL TRAVER *et al.*

and

CHARLES A. RICHARDSON
vs. } In Chancery.
HENRY J. TRAVER *et al.*

Henry J. Traver, Ayres, and Richardson, appearing by their so-

licitors, it is ordered that the above-entitled cause be consolidated as one cause, and thereupon the said defendant, Richardson, withdraws his plea filed in the first above-entitled cause, and by consent a rule is hereby entered for defendant, Richardson, to answer the amended bill in twenty days from this day, and that defendants, Henry J. Traver and Michael Traver answer the bill of said Richardson in twenty days from this day. It is also ordered that the answer of Enos Ayres to the original bill stand as an answer to the amended bill in the first above cause.

Afterwards, to wit, on the fifth day of May, A. D. 1877, came Henry J. Traver and Michael Traver, by their solicitors, and
118 filed in said clerk's office their answer to the bill of complaint of Charles A. Richardson in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA,
Northern District of Illinois.

In the Circuit Court thereof.

CHARLES A. RICHARDSON
vs.
HENRY J. TRAVER *et al.* } In Chancery.

The joint and several answers of Henry J. Traver, Michael Traver, and to the bill of complaint as amended, exhibited against them and others by the said Charles A. Richardson in the above-entitled cause.

These defendants, now and at all times saving and reserving to themselves all manner of advantage and benefit by way of exception to the manifest and manifold errors and insufficiencies of the said bill of complaint as amended, yet, nevertheless, for answer thereto, or to so much and such parts thereof as they are advised by counsel it is material and necessary for them to make answer unto, answering, say:

They admit the making of said notes and trust deed, the record of said trust deed, and the payment to John Dickson of the two of said notes first maturing, substantially as charged in the bill.
119 Respondents further answering, deny that said complainant, on or about January 15, 1875, or at any other time, purchased the said two notes last maturing, as charged in said bill. And respondents deny all allegations and averments of said bill which charge in substance or effect that the complainant ever became the *bona fide* owner and holder of said notes as against these respondents; but, on the contrary, this respondent, Henry J. Traver, upon the hearing hereof, will set up and insist as matter of defence herein upon the facts set up and charged in bill of complaint, supplemental bill and amended bill, filed by the said Henry J. Traver in the circuit court of Cook county, Illinois, against said defendant Michael Traver and others, which said suit has been removed from said cir-

cuit court of Cook county to this honorable court, and by its order consolidated with this suit; and which said bill, supplemental bill, and amended bill so filed by said Henry J. Traver, as aforesaid, are hereby referred to, and for all the purposes of this answer are hereby made part hereof as fully and to like effect as if the same were here and now in words and figures set forth herein. And said defendant, Henry J. Traver, for himself, will insist upon all the matters and things charged and set up in said bill, supplemental bill, and amended bill, as a defense to the equity of the bill filed herein.

120 Respondents admit the subdivision of said land into lots and blocks substanially as charged in said bill.

Respondents neither admit or denay the charge in said bill that defendants, Henry J. and Michael Traver, with their respective wives, conveyed lots 10 to 39, inclusive, in block 2of said subdivision, to one Charles M. Earl, and that afterwards said Earl and wife conveyed the same to said Hyde, as charged in said bill, but leave the complainant to prove the same as he shall be advised.

Respondents admit that on or about the 5th day of September, 1872, the said Michael Traver and wife duly conveyed all of said block one (1), (together with eight lots in said block three), in said subdivision, to said Henry J. Traver, which said conveyance was for a good and valuable consideration, and was duly recorded. And respondents admit that on or about Dec. 20th, 1872, said Henry J. Traver conveyed all his title in and to all the rest and residue of said subdivision to said Michael Traver. That said conveyance to said Michael Traver was made upon the considerations set forth and stated in the original bill of complaint filed by said Henry J. Traver against said Michael Traver and others, which has been consolidated with this suit, and hereinbefore referred to and made part hereof.

121 And respondents admit that said Michael Traver and wife, upon the considerations stated in said bill of complaint last before referred to, and not otherwise, did convey all his title to said subdivision to said Hyde. And defendants aver that the sole and only consideration for said conveyance from said Henry J. Traver to said Michael Traver was the agreement of said Michael to pay all of the said mortgage debt to said Dickson, so as to render free and clear of all incumbrance the said block one (1) and said eight lots in said block three (3), and the sole and only consideration of said conveyance from said Michael Traver to said Hyde was the assumption and agreement by said Hyde to faithfully perform the said undertaking of said Michael as aforesaid.

Respondents admit the release by said Enos Ayres of said block three (3), as charged in said bill.

Respondents admit that said Enos Ayres, trustee, in said trust deed to said Dickson and said Oswell A. Bogue, then claiming to be the owner and holder of both of said notes last maturing, and having possession thereof, and said Hyde, claiming to own the equity of redemption in and to all of said subdivision, including said block one (1) and said eight lots in said block three (3), the property of

said Henry J. Traver, conspired together, and, for the purpose of defrauding said Henry J. Traver, did cause a certain false,
122 fraudulent, and pretended release of said block two (2) from the lien of said trust deed to be made and filed for record, as charged and set up in said bill of complaint of said Henry J. Traver.

And respondents charge the fact to be that said complainant, either personally or through his agent, the said Bogue, conspired with said Bogue and Hyde to cheat and defraud this respondent, Henry J. Traver, by obtaining from said Ayres the release as afresaid, without the payment of any part of the debt secured by said trust deed to said Ayres.

And respondents charge that said Richardson, complainant, is but the tool of said Hyde and Bogue. That the pretended purchase of said notes by him was a false pretense. That the said notes have never been in his possession; but, on the contrary, have, since the surrender of the possession thereof by said Dickson, [been] in the hands of said Bogue.

And respondents charge that said complainant had at all times full notice of all the facts stated and charged in said bill of complaint filed by said Henry J. Traver as aforesaid. That upon the filing of said bill said Bogue, then in the actual possession of said notes, was by the order and injunction of said circuit court of Cook county enjoined and restrained from transferring or surrendering to anybody the said notes, which said injunction still remains
123 in full force and effect, not having been vacated or dissolved.

And respondents will, upon the hearing hereof, set up [and] show to the court and insist upon as a defence to this suit, that at the time of the commencement thereof by said complainants in this honorable court, the subject matter of said suit, to wit, the said notes and trust deed, were under the order and injunction of the circuit court of Cook county in the said suit of said Henry J. Traver against said Michael Traver and others.

That said last named court had then full and complete jurisdiction of all the subject matter of this suit, and of all the necessary parties for the enforcement of said jurisdiction. And that the filing of the bill herein by said complainant was in violation of the order and injunction of said court, and in contempt thereof, and respondents will, upon the hearing hereof, insist upon the dismissal of this suit for said reason.

And having fully answered, these respondents pray to be hence discharged with their costs, &c.

HENRY J. TRAVER AND
MICHAEL TRAVER, *Def'ts.*
By McCOY & PRATT, *Sols.*

McCOY & PRATT, *Def'ts' Sols.*

(Endorsed:) Filed May 5, '77. Wm. H. Bradley, cl'k.

123½ Afterwards, to wit, on the seventh day of May, A. D. 1877, came Charles A. Richardson, by his solicitor, and filed

in said clerk's office his answer to the amended bill of complaint of Henry J. Traver in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

The several answer of Charles A. Richardson, one of the defendants, to the amended bill of complaint of Henry J. Traver, complainant:

This defendant, saving and reserving unto himself all benefit of exception which can or may be had or taken to the said amended bill for answer thereto, says:

That he believes it to be true, as stated in said amended bill, that said complainant and the defendant, Michael Traver, purchased the land and premises mentioned in said bill from John Dickson, as therein stated, but he has no knowledge or information in respect to the particular circumstances of said purchase, but this defendant admits it to be true that said complainant and said Michael Traver, to secure a portion of the purchase money for said land, executed and delivered to said Dickson their four promissory notes, payable to said Dickson, bearing date on the nineteenth day
124 of December, A. D. 1870, for the sum of five thousand three hundred and seventy-three and 67½-100 dollars each, and due, respectively, in two, three, four and five years after date thereof, with interest, payable semi-annually, at the rate of eight per cent. per annum, and that said complainant and said Michal Traver to secure the payment of said purchase money notes, executed a deed of trust on said land to Enos Ayres, as trustee, as stated in said amended bill.

This defendant further says, that he has no knowledge in regard to the subsequent alleged subdivision of said land as set forth in said bill.

And this defendant further answering, says that he has no knowledge in regard to the alleged conveyances of said lands stated in said amended bill to have been made subsequent to the execution of said deed of trust to said Ayers, and this defendant has no knowledge in regard to the alleged agreements between said complainant and said Michael Traver, or between said Michael Traver and said Hyde, as stated in said amended bill.

And this defendant has no knowledge in respect to any of the alleged transactions between said complainant and said Michael Traver, and between said Michael Traver and said Hyde, as stated in said amended bill, and this defendant denies that he is in any manner connected with or concerned in any of the contro-
125 versies between said complainant and said Michael Traver and said Hyde, growing out of said transactions and agreements alleged in said amended bill, or any of them.

And further answering, this defendant says that on or about the

month of December, A. D. 1874, he purchased, through his agents, Henry L. Hammond and Oswell A. Bogue, the two notes above mentioned, payable to said John Dickson, due respectively in four and five years after date thereof, and paid therefor the sum of ten thousand dollars, and has ever since been the legal and equitable owner of said notes; that at and before the time of said purchase, as this defendant is informed and believes, certain portions of the lands described in the deed of trust which was made to secure the payment of said Dickson notes had been released from the lien of said trust deed by the trustee therein; but this defendant has no knowledge of the circumstances under which said releases were made, and he denies that said releases were made with any fraudulent intent whatever. This defendant further says that prior to the time of the purchase of said two notes by this defendant, as aforesaid, the other two of said notes first becoming due had been paid and discharged and the interest and a sufficient amount of the principal of the remaining two notes had been paid to reduce
126 the amount of the incumbrance to the sum of ten thousand dollars, or thereabouts, and that the portions of said premises conveyed by said trust deed, described as blocks two and three, were released, as this defendant is informed and believes, in consequence of such payments. And this defendant is informed and believes that said Oswell A. Bogue gave his consent to the release of said block two, but this defendant denies that said Bogue gave such consent with any intent whatever to commit any fraud or to do any injury or injustice to said complainant or any other person; and this defendant denies that said Bogue is chargeable with any wrong in giving such consent. This defendant had no knowledge in regard to said release and said consent so given by said Bogue until after the filing of said amended bill. And this defendant denies that he, through his agents, said Hammond and Bogue, or otherwise, had any notice of any equities of said complainant which ought or should have prevented this defendant from giving his consent to such release aforesaid at the time said Bogue consented to the same. And this defendant avers that even if it were true that said Bogue had, with a fraudulent intent, represented himself to be the owner of notes which he held in his possession as the agent of this defendant only, and improperly, and with such fraudulent intent assented to a release of security to the benefit of which
127 this defendant was lawfully and equitably entitled, such conduct ought not to prejudice this defendant or deprive him of his rights.

And this defendant further answering, says that he has no knowledge of any fraudulent combination between said Bogue and said Hyde in respect to the premises, or of any act or intent on the part of said Bogue to injure, defraud, or prejudice the said complainant in regard thereto, and he denies all and singular the statements and charges in said amended bill imputing such fraud in act or intent. And this defendant says that it is wholly untrue that this defendant did, or has ever, entered into any combination with said Bogue and Hyde, or with any person whatsoever, to do any wrong or injury

to said complainant; that it is not true that the two notes purchased by this defendant have been at any time paid or discharged by said Hyde or by any other person.

And this defendant further says that at or about the time of the purchase of said two notes by this defendant, and at or about the time of the release of said block two, the said note so purchased by this defendant, due in December, A. D. 1874, was extended, and the time of payment thereof foreborne for the period of one year.

And this defendant, on his information and belief, avers that had he not purchased said two Dickson notes, and had not
128 such extension of the time of payment of one of said notes been made, the said Dickson trust deed would have been foreclosed, and the said block one would have been first sold under such foreclosure, as it was then so liable to be sold; and this defendant denies that said complainant was placed in any worse position or in any way prejudiced in consequence of the release of said block two.

And this defendant further answering, says that after the year for which the payment of said note due in December, 1874, had been extended as aforesaid had expired, both of said notes purchased by this defendant being then overdue and unpaid, this defendant, on or about the 28th day of December, 1875, filed his bill in the circuit court of the United States for the northern district of Illinois, to foreclose said deed of trust, which suit is now pending in said court.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said amended bill charged. Without this that any other matter, cause, or thing in the said amended bill contained, material or necessary to be answered unto by this defendant, and not herein and hereby well and sufficiently answered, traversed, confessed, and avoided or de-
129 nied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges, etc.

CHARLES A. RICHARDSON.

F. C. INGALLS,
Sol'r and of Counsel for Def't, Richardson.

(Endorsed:) Filed May 7, 1877. Wm. H. Bradley, clerk.

Afterwards, to wit, on the fourteenth day of May A. D. 1877, came Charles A. Richardson, complainant, by his solicitor, and filed in said clerk's office his replication to the answer of L. C. Paine Freer, John Borden, and William Borden, in said entitled cause, which said replication is in the words and figure following, to wit:

Replication.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

The replication of Charles A. Richardson, complainant, to the joint and several answer of L. C. Paine Freer, John Borden, and William Borden, defendants.

This repliant, saving unto himself all advantage of exception which may be had or taken to the errors, uncertainties, and insufficiencies of the answer of the said defendants for replication thereunto,
130 says, that he does and will aver, maintain, and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants; and that the answer of the said defendants is uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, traversed, confessed, and avoided or denied is true, all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and prays as in and by his said bill he has already prayed.

CHARLES A. RICHARDSON.
By F. C. INGALLS, *his Sol'r.*

F. C. INGALLS,
Sol'r & of Counsel.

(Endorsed:) Filed May 14, 1877. Wm. H. Bradley, cl'k.

On that same day, to wit, the fourteenth day of May, A. D. 1877, came Charles A. Richardson, complainant, by his solicitor, and filed in said clerk's office his replication to the answer of Henry J. Traver and Michael Traver in said entitled cause, which said replication is in the words and figures following, to wit,

Replication.

131 In the circuit court of the United States, for the northern district of Illinois. In chancery.

The replication of Charles A. Richardson, complainant, to the joint and several answer of Henry J. Traver and Michael Traver, defendants.

This replaint reserving unto himself all advantage of exception, which may be had or taken to the errors, uncertainties, and insufficiences of the answer of the said defendants, for replication thereunto, says that he does and will aver, maintain, and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants; and that the answer of the said defendants is uncertain, evasive, and insufficient in the law to be replied unto by this replaint. Without this that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not hereby well and sufficiently replied unto, traversed,

confessed, and avoided, or denied is true. All which matters and things this replaint is ready to aver, maintain, and prove as this honorable court shall direct, and prays as in and by his said bill he has already prayed

CHARLES A. RICHARDSON,
By F. C. INGALLS, *his Sol'r.*

F. C. INGALLS,
Sol'r and of Counsel.

(Endorsed): Filed May 14, '77. Wm. H. Bradley, cl'k.

132 Afterward, to wit, on the fifth day of July, A. D. 1877, came Mary A. Pearson, by her solicitor and filed in said clerk's office, her answer to the bill of complaint of Charles A. Richardson in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

In the United States circuit court in and for the northern district of Illinois.

CHARLES A. RICHARDSON
vs.
HENRY J. TRAVER, CLARISSA S. TRAVER, MICHAEL TRAVER, MARY J. Traver, Enos Ayres, Henry L. Hammond, L. C. Paine Freer, Alvin Hulbert, Gwynn Garnett, John Borden, William Borden, Michael Weidinger, Nathaniel S. Goss, James C. Hyde, Caroline E. Jones, Mary E. Bruce, Oswell A. Bogue, Hugh A. White, John Baldwin, Jr., Lockart R. Carswell, Frederick A. Weage, and Mary Ann Pearson.

The several answer of Mary Ann Pearson, one of the defendants, to the bill of complaint of Charles A. Richardson, complainant.

This defendant now and at all times hereafter saving and reserving unto *him*self all and all manner of benefit or advantage of exception that can or may be had or taken to the manifold errors, imperfections, and insufficiences in said bill contained, for
133 answer thereto, or to so much thereof as she is advised is material or necessary to be answered unto, answering, says. That she is the owner of lots thirty-two (32), thirty three (33), thirty-four (34), thirty-five (35), and thirty-six (36), in J. C. Hyde's re-subdivision of said block two (2) of Traver's subdivision east 15 $\frac{92}{100}$ acres of the west 30 $\frac{92}{100}$ acres of that part of the southeast $\frac{1}{4}$ of section 23, town. 39 north, range 13 east of the third principal meridian, lying south of Ogden avenue, free and clear of any lien by reason of said trust deed in said bill mentioned.

That said release of said block two, in said bill mentioned, was upon and for a full and valuable consideration, and was made with the

knowledge and assent of the legal holder of the notes secured by the said trust deed.

Further answering, this defendant says that she is a stranger to to all and singlar the other allegations of said complainant's bill, and denies the same, and calls for strict proof of each and every allegation in said bill contained. And this defendant submits to the court that said complainant has not made or stated by his said bill of complaint such a case as entitles him to any relief as against this defendant, and the said lots of ground by her owned, and which are hereinbefore described, and she prays
134 that upon hearing hereof she may have the same benefit of this defense as if she had demurred to complainant's bill.

And this defendant denies all and all manner of unlawful combination in said bill charged, and prays to be hence dismissed with her reasonable costs in this behalf most wrongfully sustained.

MARY ANN PEARSON,
By F. J. SMITH,
Her Attorney and Solicitor.

FRANK J. SMITH,
Counsel for Def't, Mary A. Pearson.

(Endorsed:) Filed July 5, 1877. Wm. H. Bradley, cl'k.

135 Afterward, to wit, on the ninth day of July, A. D. 1877, came Nathaniel S. Goss, by his solicitor, and filed in said clerk's office his answer to the bill of complaint of Charles A. Richardson in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois.

CHARLES A. RICHARDSON
vs.
HENRY J. TRAVER, CLARISSA S. TRAVER, MICHAEL Traver, Mary Jane Traver, Enos Ayres, Henry L. Hammond, L. C. Paine Freer, Alvin Hulbert, Gwynn Garnett, John Borden, William Borden, Michael Weidinger, Nathaniel S. Goss, James C. Hyde, Mary A. Pearson, Caroline E. Jones, Mary E. Bruce, Oswell A. Bogue, Hugh A. White, John Baldwin, Jr., Lockhart A. Carswell, and Frederick A. Weage. } In Chancery.

The separate answer of Nathaniel S. Goss, one of the above named defendants, to the bill of complaint of Charles A. Richardson, complainant.

This defendant now and at all times hereafter saving to himself

all and all manner of benefit or advantage of exception, or otherwise, that can or may be had, or taken to the many errors,
136 uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

That he has no knowledge as to the matters and things stated in complainant's bill, save by said complainant's bill and the records of Cook county, in said State, and leaves said complainant to his proofs.

And this defendant avers, that on the 14th day of January, 1875, he purchased from said defendant, James C. Hyde, the following described premises, to wit: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19, in block 2 of Traver's subdivision in complainants said bill mentioned, and that on the same day said Hyde conveyed said premises to this defendant by warranty deed. That this defendant paid said Hyde therefor the sum of sixteen thousand two hundred and twelve dollars.

That this defendant purchased said property in good faith from said James C. Hyde, and paid full value therefore, without any knowledge of any agreement subsisting between said Traver brothers.

That this defendant insists on the validity of the said release of lot 2, and denies that said release was obtained by fraud, and this defendant avers that the release of said lot 2 was executed by the trustee and also by the legal holder of said notes, and
137 that said James C. Hyde had full power and authority from the holder of said notes to release any and all portions of said lot 2.

And this defendant further states that he is now the owner of the premises above mentioned, and as such insists on the validity of the release of said block 2, and denies the right of complainant to enforce said mortgage as against said block, and especially as against the property in said block two, owned by this defendant, and purchased by him in good faith and for full value; and this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged, without this, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his costs and charges most wrongfully sustained, &c.

NATHANIEL S. GOSS.
138 By R. W. RICABY, *His Sol'r.*

R. W. RICABY,
Sol'r for N. S. Goss.

(Endorsed:) Filed July 9, 1877. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the twelfth day of November, A. D. 1877, came the complainant, Charles A. Richardson, by his solicitor, who by leave of the court first had and obtained, filed in said clerk's office his amendment to the bill of complaint filed herein in said entitled cause, which said amendment is in the words and figures following, to wit:

Amendment to Bill.

In the Circuit Court of the United States for the Northern District of Illinois.

CHARLES A. RICHARDSON
vs.
HENRY J. TRAVER, CLARISSA S. TRAVER, MICHAEL Traver, Mary Jane Traver, Enos Ayres, Henry L. Hammond, L. C. Paine Freer, Alvin Hulbert, Gwynn Garnett, John Borden, William Borden, Michael Weidinger, Nathaniel S. Goss, James C. Hyde, Mary A. Pearson, Caroline E. Jones, Mary E. Bruce, Oswell A. Bogue, Hugh A. White, John Baldwin, Jr., Lockhart R. Carswell, and Frederick A. Weage. } In Chancery.

Now comes the said complainant, by leave of the court for that purpose first had and obtained, and amends his said bill of
139 complaint filed herein as follows: By adding the name of Samuel A. Sawyer to the parties named as defendants in the commencement of the bill; also by adding, in connection therewith, the following allegation: That said Samuel A. Sawyer is a resident of the city of New York, and a citizen of the State of New York.

Also by adding to the stating part of the bill, after the statement of the equities of said complainant, the following allegation: Your orator further shows that said Samuel A. Sawyer has, or claims, some right, title, or interest in some portion of the land described in the deed of trust above mentioned as a judgment creditor, or otherwise; but your orator avers that such right, title, or interest of said Sawyer, if any he has, is subject and subordinate to the lien of your orator's deed of trust aforesaid.

Also by adding the name of Samuel A. Sawyer to the parties named as defendants in the prayer for process of subpœna.

F. C. INGALLS,
Solicitor for Complainant.

(Endorsed:) Filed November 2, A. D. 1877. Wm. H. Bradley, clerk.

Afterward, to wit, on the fifteenth day of November, A. D. 1877, came Samuel A. Sawyer, by his solicitor, and filed in said clerk's office his answer to the two bills of complaint in said enti-
140 tled cause, which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois. }

In the circuit court of the United States for said district.

The several answer of Samuel A. Sawyer, one of the defendants, to the bill of complaint of Charles A. Richardson, complainant, and to the amended bill of complaint of Henry J. Traver, complainant, the causes wherein said bills were filed having been consolidated in said court.

This defendant now and at all times hereafter, saving and reserving unto himself all benefit of exception which can or may be had or taken to the said bill and amended bill of complaint, for answer to each of them, says:

This defendant admits, as is stated in said amended bill, that said complainant, Henry J. Traver, and the said defendant, Michael Traver, purchased the land described in said amended bill from John Dickson at the time stated in said amended [bill], but this defendant has no knowledge or information as to the terms or provisions of said purchase from said Dickson, or whether the trust deed described in said amended bill was made by said Henry
141 J. Traver and said Michael Traver to said Enos Ayers, as trustee, to secure a portion of the purchase money for the said land, as is averred in the said amended bill filed by the said Henry J. Traver; but this defendant, nevertheless, admits that at the time stated in said amended bill said Henry J. and Michael Traver executed and delivered to said Dickson their 4 promissory notes, each for the sum of 5,373 67½-100 dollars, dated of the 19th day of December, A. D. 1870, and due in 2, 3, 4, and 5 years from date, respectively, with interest payable semi-annually, at the rate of eight per centum per annum, and that said Henry J. and Michael Traver, to secure the payment of said promissory notes, executed to said Enos Ayres, as trustee, a deed of trust upon the said land at the time stated in said amended bill.

This defendant admits that at or about the time stated in said amended bill said Henry J. and Michael Traver duly subdivided and laid out said land into lots and blocks with streets and alleys, as is alleged in said amended bill, and that the subdivision of said land was entitled and was filed for record, as is stated in said amended bill, and that by said subdivision said land was divided into three blocks, numbered one, two, and three, respectively, block
142 one containing 43 lots, block two containing 48 lots, and block three containing 44 lots.

And this defendant admits that after said subdivision of said land, said Henry J. and Michael Traver sold some of said lots in said block 3, but this defendant knows nothing as to whether said Henry J. Traver did attend personally to the business connected with said land, or as to whether said Michael Traver acted for both himself and said Henry J. Traver, or personally attended to

said sales of said lots in said block 3, or secured the avails thereof, as is alleged in said amended bill filed by said Henry J. Traver.

And this defendant avers that said Henry J. Traver and Michael Traver also sold and conveyed lots in said block two of said subdivision, and that on or about the 2d day of September, A. D. 1872, by their full warranty deed dated of that day and year, wherein their wives joined with them, in consideration of the sum of fifteen thousand (15,000) dollars, they granted, bargained, sold, and conveyed to one Charles M. Earl lots ten (10) to thirty-nine (39), both inclusive, in said two (2) in fee-simple, which warranty deed so made by said Henry J. Traver and Michael Traver to said Charles M. Earl was duly recorded in the recorder's office of said county of Cook, on the 12th day of September, A. D. 1872.

143 And this defendant avers that said warranty deed by said Travers to said Earl contained express covenants on the part of said Travers to said Earl, his heirs and assigns, of seizin and of right to sell and convey said last described lots, and that said lots were, at the time of the execution of said warranty deed, free and clear of all incumbrances and liens of whatsoever kind and nature, and that the said last described lots said Travers would forever warrant and defend to the said Earl, his heirs and assigns.

And this defendant avers he has no knowledge in regard to the alleged agreements claimed in said amended bill of said Henry J. Traver to have been made by and between him and said Michael Traver, or between said Michael J. Traver and James C. Hyde, and if such agreements were ever made between the parties aforesaid, or any of them, this defendant never heard of the same, or of any of them, until after the first day of January, A. D. 1877.

And this defendants also avers he has no knowledge as to the deed alleged in said amended bill to have been executed by said Michael Traver to said Henry J. Traver, but he admits that on the 20th day of December, A. D. 1872, said Henry J. Traver duly made and delivered to said Michael Traver a deed of con-

144 veyance of all the unsold portions of said blocks two (2) and three (3), which deed this defendant avers, expressly conveyed to said Michael Traver, his heirs and assigns, forever, lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), and nine (9), in said block two (2), along with other lots in said block two (2) and lots in said block three (3), and which deed was in effect a special warranty deed, wherein and whereby said Henry J. Traver did expressly covenant with said Michael Traver against all acts done or suffered by him, and that he would warrant and forever defend the said lots in and by his said deed conveyed to the said Michael Travers, his heirs and assigns, against all persons claiming or to claim the same by, through, or under him, the said Henry J. Traver.

And this defendant avers that said deed by said Henry J. to Michael Traver purports to have been made in consideration of the sum of one hundred dollars, the receipt whereof the said Henry J. Traver therein acknowledges to have been paid to him by the said Michael Traver.

And this defendant avers that if said deed by Henry J. to Michael Traver was made in pursuance of the agreement stated in said amended bill, no such agreement is shown on the face of the deed, and this defendant never heard or had any notice or information thereof until after the first day of January, A. D. 1877.

145 And this defendant admits that on the 28th day of December, A. D. 1872, said Michael Traver and his wife did, by their good and sufficient deed of that date, duly executed, acknowledged, and delivered, convey to said James C. Hyde, all the then remaining interest of said Michael Traver in and to said Traver's subdivision, and this defendant avers that such remaining interest included, and said deed by said Michael Traver and his wife to said Hyde expressly conveyed to said Hyde, among other lots, said lot one (1) to nine (9) inclusive, in said block two (2), but this defendant does not know that said conveyance by said Michael Traver and his wife to said Hyde was made in pursuance of the agreement alleged in said amended bill, and never knew it was so claimed or pretended by said Henry J. Traver, or any other person, until after the first day of January, A. D. 1877, but, on the contrary, this defendant has always believed, and does still believe, that the last aforsaid deed was, as the same expressly recites and declares, made in consideration of the sum of sixteen thousand dollars, at the time of the execution thereof paid by said Hyde to said Michael Traver.

And this defendant admits that said deed by said *by said* Henry J.

146 Traver to said Michael Traver, and said deed by said Michael Traver to said Hyde, were recorded in the recorder's office of Cook county, Illinois, as is alleged in said amended bill.

And this respondent admits that said Hyde paid two of said four notes to said Dickson, and said Dickson and said Enos Ayres did release all of said block three from the lien of said trust deed, leaving said remaining two unpaid notes an apparent lien on said blocks one (1) and two (2); and this respondent avers that said release was made with and by the express consent of said Henry J. Traver, and that said Dickson, when he joined in the same, was the owner and holder of all four of said promissory notes, but this respondent does not know that said release was obtained, or that said two (2) promisory notes which were so paid by said Hyde were paid by him in pursuance, or in part pursuance, of the agreement or pretended agreement set forth in said amended bill.

And further answering, this resepondent denies that said Hyde, in February, A. D. 1875, or at any other time, conspired or confederated with said Oswell A. Bogue, as is averred in said amended bill, but admits that in February, 1875, said two unpaid promissory notes and said trust deed were placed in the hands of said Bogue as the

147 apparent purchaser thereof, but this respondent does not know that the said two unpaid notes were in fact paid by said Hyde, and ought to have been delivered up to said Henry J. Traver and Michael Traver for cancellation, as is averred in said amended bill.

This respondent knows nothing in reference to the signing, endorsing, or guaranteeing of said four promissory notes, or any of them, by said Hyde, or by the firm of Snyder & Lee, of whether said pretended signing, endorsing, or guaranteeing was done as a part of the pretended contract between said Hyde and Michael Traver, or in pursuance thereof, or as evidence that said Hyde was to pay said notes as is alleged in said amended bill.

This respondent does not know what or whether said Bogue had any knowladge of the said pretended contract and understanding of said Hyde, or that said Hyde was bound to procure the release of said block one (1) to said Henry J. Traver, or to surrender and deliver to him said two unpaid promissory notes, or either of them, but this respondent denies that said Bogue confederated or conspired with said Hyde to cheat or defraud said Henry J. Traver in the manner stated in said amended bill, or in any other manner; but this respondent admits that said two unpaid promissory notes being placed in the hands of said Bogue, as the apparent owner thereof by purchase from said Dickson, a release of said block two (2)
148 was obtained from said Enos Ayres, which release was duly executed, acknowledged, and delivered, and was recorded in said recorder's office, at the time stated in said amended bill. This respondent avers that said Bogue did join with said Enos Ayres in the execution and delivery of said release of said block two (2), and and at the time he did so he was in possession of said two notes then remaining unpaid, which were duly endorsed in blank by said Dickson, and said Bogue was then the apparent owner and holder of said two unpaid notes, and joined with said Ayres in said release of said block two (2) as such owner and holder thereof, as is expressly averred and stated therein. This respondent does not know whether said Hyde and Bogue falsely represented to said Enos Ayres that said Hyde was the owner of the equity of redemption in both of said blocks one (1) and two (2), or that said Bogue was the owner of said two then unpaid notes, and this respondent does not know that if said Bogue ever paid or invested anything in or about the "said transaction;" he only loaned it to said Hyde, and holds the said Hyde notes therefor, or holds said two last-mentioned notes as collateral, as is stated in said amended bill.

This respondent denies that said Henry J. Traver in purchasing saidblock one (1) said Michael Traver became the first alienee
149 of said Michael Traver, and as to all the parts and portions subsequently conveyed by said Michael Traver, said Henry J. Traver is entitled to have such portions so subsequently conveyed, sold, and exhausted before said block one (1) shall be sold to pay any portion of said debt secured by said trust deed. And this respondent avers that said lots ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), and nineteen (19), in said block two (2), were sold and conveyed by said Henry J. Traver and Michael Traver to said Charles N. Earl, before said Henry J. Traver became the sole owner of said block one (1) by purchase of the undivided one-half interest therein of the said Michael Traver; and that this respondent is the

owner of the lots last above specified, as is hereinafter averred and set forth, as well as of said lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), and eight (8), as is also hereinafter set forth.

And this respondent avers that on the 28th day of December, A. D. 1872, said Charles N. Earl, being then the owner of said lots 10 to 19, both inclusive, in said block two (2), sold and, by his deed of that date, conveyed the same, along with others real estate, to said James C. Hyde, and on the 15th day of January, A. D.
150 1875, and while said Hyde was the owner of said lots 9 to 19, both inclusive, in said block two (2), by virtue of said deed by said Charles N. Earl to him, and of said lots one (1) to nine (9), both inclusive, in said block two (2), by virtue of said deed by said Michael Traver to him, this respondent recovered in the circuit court of Cook county, in said State of Illinois, a judgment against said James C. Hyde and Thomas D. Snyder and J. Lewis Lee for the sum of three thousand and seventy-one (3,071) dollars and ten (10) cents and costs of suit, and on the 17th day of August, A. D. 1875, an alias execution was issued on said judgment directed to the sheriff of said county of Cook to execute, who, on the 19th day of August, A. D. 1875, duly levied said execution on said lots one (1) to nineteen (19), both inclusive, in said block two (2), and on the 13th day of September, A. D. 1875, after having advertised the time and place of the sale under said execution, according to the law, said sheriff struck off and sold the lots last aforesaid to this respondent for the sum of $3,259.30, and duly executed and delivered to him a certificate of purchase therefor, and on the 18th day of December, A. D. 1876, said lots so sold by said sheriff not having been redeemed, said sheriff executed and delivered to this respondent a deed dated of that day and year, whereby he conveyed to this respondent said lots one (1) to nineteen, in said block two
151 (2), both inclusive, in fee simple.

And this respondent avers that ever since the making and delivery of said sheriff's deed to this respondent he has been and still is the owner of the lots last aforesaid, in fee simple; that when he purchased the same at said sale by said sheriff said block two (2) had been and was duly released from the lien of said trust deed, and the said release thereof was of record in said recorder's office; that when this respondent recovered said judgment against said Hyde, Snyder, and Lee he had no notice of said pretended agreement or contract between said Henry J. Traver and said Michael Traver, or between said Michael Traver and said Hyde, and never in fact knew or heard thereof, or had any notice, knowledge, or information concerning the same till long after the first day of January, A. D. 1877. And this respondent avers that having obtained said judgment against said Hyde and Snyder and Lee while said Hyde was the owner of the last aforesaid lots, and without any notice, knowledge, or information respecting the pretended contracts and agreements in said amended bill claimed to have been made between said Henry J. Traver and Michael Traver, and between said Michael Traver and said Hyde, this respondent thereby obtained a

valid lien on the last aforesaid lots, and the right to have the
152 same sold on an execution to be issued on said judgment, and to purchase the same in satisfaction of said judgment free and clear from and of all the pretended claims and equities of said Henry J. Traver.

This respondent avers that said Henry J. Traver, after the execution and recording of said trust deed, having along with said Michael Traver conveyed said lots ten (10) to nineteen (19), both inclusive, in said block two (2) by full warranty deed containing covenants of seizin, rights to convey, freedom of all incumbrances, and liens and covenants of warranty, is estopped from setting up and claiming that any portion of the burden of said trust deed ought to be thrown on the lots last aforesaid, or any of them, and that said Henry J. Traver having conveyed said lots one (1) to nine (9), both inclusive, in said block two (2) to said Michael Traver, his heirs and assigns, forever, by a deed wherein and whereby the said Henry J. Traver covenanted with said Michael Traver, his heirs, executors, administrators, and assigns, that said lots one (1) to nine (9), both inclusive, in said block two (2), were free and clear from and of all liens and incumbrances done or suffered by him, the said Henry J. Traver, and that he would forever warrant and defend the possession thereof as against all persons claiming or to claim the
153 same by, through, or under him, the said Henry J. Traver, is estopped from claiming, as against this defendant the relief sought by him in his said amended bill, and from throwing or seeking to impose the burden of said trust deed on the last aforesaid lots, or any of them.

And this defendant avers, that when he purchased said lots one to nineteen (1 to 19), both inclusive, in said block two (2), both of said releases described in said amended bill were of record in said recorder's office, and this defendant then supposed and believed that the same were valid and effectual to relieve the parts of said subdivision therein and thereby described, and released, respectively, from the lien and burden of said trust deed, as he now still believes and supposes, and this defendant never had any notice of the claims of said Henry J. Traver in regard to said releases or either of them, or any information concerning the same, until after the first day of January, A. D. 1877, and this defendant avers he is a *bona fide* purchaser of said last specified lots without notice of any equities or pretended equities arising between said Henry J. Traver and James C. Hyde, and ought not to be effected thereby in respect to the lots last aforesaid or any of them.

And further answering, this defendant says he does not know whether said complainant, Charles A. Richardson, on or
154 about the 15th day of February, A. D. 1875, or at any other time, for a good or valuable consideration or otherwise, purchased from said Dickson the two aforesaid notes, payable, respectively, in four (4) and five (5) years from date, or whether the said Dickson assigned, and under his hand endorsed the same and delivered them so endorsed to said Richardson, at the time stated in said Richardson's bill, or at any other time, or before or after the same

or either of them became due and payable, or whether said Richardson became, and still remains, the legal and equitable holder and owner of the notes last aforesaid, or whether the principal thereof remains wholly unpaid, or there is or was due thereon to said Richardson, from said Henry J. and Michael Traver, the sum of money stated *in* said Richardson, and interest thereon, as is by him claimed in his said bill.

And this defendant admits that the two releases described in said bill filed by said Richardson, were executed at or about the respective times stated by said Richardson in his said bill, and were recorded at the times and in the book and pages therein set forth, respectively, and this defendant also avers that, in the said release of said block two (2), executed on or about the 19th day of February, A. D. 1875, the said Oswell A. Bogue joined with said Enos Ayres, the trustee in said trust deed, as the
155 owner and holder of the two notes claimed by said Richardson to be held and owned by him, and that at the time of the execution of the last aforesaid release the two last aforesaid notes were in the possession of said Bogue, and he was then apparently the legal holder and owner thereof by proper endorsements under the hand of said Dickson, and that said Richardson knew of and consented to said release of said block two (2) at the time it was made and delivered, and is bound thereby, even if he was at the time the owner of the two notes last aforesaid, and is estopped from claiming that said release of said block two (2) is not valid and effectual as against this defendant in respect of said lots from one (1) to nineteen (19), both inclusive, in said block two (2), which lots are owned by this defendant, as is hereinbefore averred.

And this defendant avers that when he purchased said 19 lots sold by said sheriff to him he had no notice, knowledge, or information, and he did not believe or suppose that said Richardson had or claimed to have, or would claim to have, any right or interest in or to either of the last aforesaid notes, but this defendant then believed and supposed that said Bogue then was the real owner and owner thereof, as, in fact, he appeared to be, and this defendant says that if said Richardson was the real owner of the last aforesaid notes, he allowed and permitted said Bogue to hold possession
156 thereof under blank endorsements thereon written by the said Dickson, and to act in reference to the same, and in reference to said release of said block two, as if he were, in fact, as he was to all appearances, the real holder and owner thereof, and the said Richardson is bound by the act of said Bogue, in executing said release of said block two (2), and cannot and ought not resort to the same for payment of the two last aforesaid notes, which he now claims to own and seeks by his said bill to foreclose.

And this defendant, having answered both of said bills of complaint, prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

SAMUEL A. SAWYER.
JAMES E. MONROE,
Solicitor.

(Endorsed :) Filed Nov. 15th, 1878. W. H. Bradley, clerk.

And on that same day, to wit, the fifteenth day of November, A. D. 1877, came Charles A Richardson, by his solicitor, and filed in said clerk's office his replications to answers of Mary A. Pearson and Nathaniel S. Goss in said entitled cause, which said replication is in the words and figures following, to wit :

Replication.

157 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

The replication of Charles A. Richardson, complainant, to the several answers of Mary A. Pearson and Nathaniel S. Goss, defendants :

This repliant, saving unto himself all advantage of exception which may be had or taken to the errors, uncertainties, and insufficiencies of the said several answers of said defendants, for replication to the said answers and each of them, says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that said several answers of said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said several answers, or either of them contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed, or denied, is true. All which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and prays as in and by his said bill he has already prayed.

F. C. INGALLS,
Sol'r for Compl't.

(Endorsed :) Filed Nov. 15th, 1877. W. H. Bradley, clerk.

158 And on that same day, to wit, the fifteenth day of November, A. D. 1877, came Charles A. Richardson, by his solicitor, and filed in said clerk's office his replication to the answer of Samuel A. Sawyer in said entitled cause, which said answer is in the words and figures following, to wit :

Replication.

In the Circuit Court of the United States for the Northern Dist. of Illinois.

NORTHERN DIST. OF ILLINOIS, *ss :*

CHARLES A. RICHARDSON
vs.
HENRY J. TRAVER *et al.* } In Chancery.

The replication of Charles A. Richardson, complainant, to the several answer of Samuel A. Sawyer, defendant.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereto, says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answered
159 contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things this repliant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

FRED. C. INGALLS,
Solicitor for Complainants.

(Endorsed:) Filed Nov. 15th, 1877. W. H. Bradley, clerk.

Afterward, to wit, on the sixteenth day of November, A. D. 1877, came the complain-t, Charles A. Richardson, and the defendant, Enos Ayres, by their solicitors, and filed in said clerk's office their stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

Stipulation.

In the Circuit Court of the United States for the Northern District of Illinois.

CHARLES A. RICHARDSON *vs.* HENRY J. TRAVER *et al.* } In Chancery.

It is hereby stipulated by and between said complainant and the defendant, Enos Ayres, that the answer filed by Enos Ayres to the bill of complaint of Henry J. Traver in the case removed
160 from the Cook county circuit court to this court, and afterwards consolidated with this cause, shall stand as the answer of said Ayres to the bill of said Richardson, said answer, with general replication thereto by said Richardson, to be considered as filed on the seventeenth day of April, A. D. 1877, at which time the order of consolidation aforesaid was entered by the court.

MONROE, BISBEE & BALL,
S'l'rs for Enos Ayres.
F. C. INGALLS,
Sol'r for Compl't.

(Endorsed:) Filed Nov. 16th, 1877. W. H. Bradley, clerk.

Afterward, to wit, on the 20th day of November, A. D. 1877, in the record of the proceedings of said court, in said entitled cause,

before the Honorable Henry W. Blodgett, district judge, appears the following entry, to wit:

CHARLES A. RICHARDSON *vs.* HENRY J. TRAVER *et al.* and HENRY J. TRAVER *vs.* MICHAEL TRAVER *et al.*	Consolidated Causes. In Chancery.

Now comes said first above-entitled complainant, by F. C. Ingalls, Esq., his solicitor, and it appearing to the court that Henry L. Hammond, Alvin Hulbert, Gwynn Gar-
161 nett, Michael Weidinger, James C. Hyde, Caroline E. Jones, Mary E. Bruce, Oswell A. Bogue, Hugh A. White, John Baldwin, Jr., Lockhart R. Carswell, and Frederick A. Weage, defendants in said first above entitled cause, either had been duly served with process, or had appeared in said cause, and had failed to answer the bill of complaint in said first entitled cause in conformity with the rules and practice of this court, and they being now each three times solemnly called come not, but make default. It is thereupon considered by the court that their defaults be entered, and that the complainant's bill of complaint, and the matters and things therein contained, be taken as confessed and true as against them.

And on motion of said complainant's solicitor, it is ordered by the court, that said first above entitled cause be referred to Henry W. Bishop, Esq., the master in chancery of this court, to take proofs and report the same to the court, and the amount due to the complainant herein.

And on that same day, to wit, the twentieth day of November, A. D. 1877, came Mary A. Pearson, Caroline E. Jones, Mary E. Bruce, and Gwynn Garnett, by their solicitors, and filed in said clerk's office their appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

162 *Appearance.*

In the Circuit Court of the United States for the Northern District of Illinois.

CHARLES A. RICHARDSON *vs.* HENRY J. TRAVER, CLARISSA S. TRAVER, MICHAEL Traver, Mary J. Traver, Enos Ayres, Henry L. Hammond, L. C. Paine Freer, Alvin Hulbert, Gwynn Garnett, John Borden, William Borden, Michael Weidinger, Nathaniel S. Goss, James C. Hyde, Mary A. Pearson, Caroline E. Jones, Mary E. Bruce, Oswell A. Bogue, Hugh A. White, John Baldwin, Jr., Lockhart R. Carswell, and Frederick A. Weage.	In Chancery. 13171.

We and each of us do hereby waive service of process of sub-

pœna in the above entitled cause, and enter our appearance as defendants therein, this 28th day of May, A. D. 1877.

GWYNN GARNETT.
MARY A. PEARSON,
By F. C. SMITH, *Sol'r.*
CAROLINE E. JONES,
MARY E. BRUCE,
By JOHN N. CRAWFORD,
Their Att'y.

(Endorsed:) Filed Nov. 20th, 1877. Wm. H. Bradley, Cl'k.

Afterward, to wit, on the twentieth day of December, A. D. 1877, in the record of the proceedings of said court in said entitled cause, before the Honorable Henry W. Blodgett, district judge, appears the following entry, to wit:

163 CHARLES A. RICHARSON *vs.* HENRY J. TRAVER *et al.* } 573. 13171.

and Consolidated Causes. In Chancery.

HENRY J. TRAVER *vs.* MICHAEL TRAVER *et al.* } 1048. 14457.

On motion of McCoy & Pratt, solicitors, it is ordered that all the defendants in court, said entitled cause No. 573, answer the bill in said entitled cause number 1048 within twenty days.

Afterward, to wit, on the 9th day of January, A. D. 1878, came Nathaniel S. Goss, by his solicitor, and filed in said clerk's office his answer to the amended bill of complaint of Henry J. Traver, in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

Circuit Court of the United States, Northern District of Illinois.

The separate answer of Nathaniel S. Goss, one of the defendants, to the bill of complaint, amended bill of Henry J. Traver, complainant.

This defendant, now and hereafter saving to himself all manner of benefit and exception to said complainant's bill, amended bill, and supplemental bill, answering, says that he is an utter
164 stranger to the matters and things stated in complainant's bill, and has no knowledge thereof save by complainant's bill and the records of said Cook county, and, therefore, can form no belief, and leaves complaint to his proof. And this defendant avers that on the 14th day of January, A. D. 1875, he purchased from said defendant, James C. Hyde, the following-described premises, to wit, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18,

and 19, in block 2 of Traver's subdivision, in complainant's said bill mentioned, and that on the same day said Hyde conveyed said premises to this defendant by warranty deed. That this defendant paid said Hyde therefor the sum of sixteen thousand two hundred twelve dollars ($16,212.00).

That this defendant purchased said property in good faith from said Hyde, and paid full value therefore without any knowledge of any agreement subsisting between said Traver brothers.

That this defendant insists on the validity of the said release of lot 2, and denies that said release was obtained by fraud; and this defendant avers that the release of said lot 2 was executed by the said trustee, and also by the legal holder of said notes, and that said James C. Hyde had full power and authority from the holder of said notes to release any and all portions of said lot 2.

165 And this defendant further states that he is now the owner of the premises above mentioned, and as such insists on the validity of the release of said block 2, and denies the right of complainant to enforce said mortgage as against said block, and especially as against the property in said block 2, owned by this defendant, and purchased by him in good faith and for full value. And this defendant denies that complainant is entitled to the relief in his said bill sought. And this defendant denies all unlawful combination and confederacy.

And this defendant hopes to have the same benefit and advantage as if he had demurred or pleaded to said complainant's bill, and prays to be dismissed with his costs, etc.

NATHANIEL S. GOSS,
By R. W. RICABY, *his Sol'r.*

R. W. RICABY, *Of Counsel.*

(Endorsed:) Filed Jan'y 9, 1878. W. H. Bradley, clerk.

Afterwards, to wit, on the seventeenth day of January, A. D. 1878, came Henry J. Traver, complainant, and Mary A. Pearson, by their solicitor, and filed in said clerk's office their stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

Stipulation.

166 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for said district, of the December Term, A. D. 1877.

CHARLES A. RICHARDDSON *vs.* HENRY J. TRAVER, CLARISSA S. TRAVER, Michael Traver, Mary Jane Traver, Enos Ayres, Mary A. Pearson, *et al.*	Gen. No. 13171. In Chancery. Bill to Foreclose.
consolidated with	Consolidated cases.
HENRY J. TRAVER *vs.* MICHAEL TRAVER, JAMES C. HYDE, OSWELL A. Bogue, Enos Ayres, Charles A. Richardson, Mary A. Pearson, *et al.*	Gen. No. 14451. In Chancery. Bill for Relief & Injunction, &c.

It is hereby stipulated and agreed that in the above consolidated cases the answer of Mary A. Pearson, filed by her solicitor, Frank J. Smith, to the bill of Charles A. Richardson *vs.* Henry J. Traver *et al.*, Gen. No. 13171, may stand and be considered as the answer of said defendant, Mary A. Pearson, to the bill of Henry J. Traver *vs.* Michael Traver *et al.*, Gen. No. 14451; and that the replication to said answer, filed by said complainant, Richardson, in Gen. No. 13171, may stand and be considered as the replication to said answer of said complainant, Henry J. Traver, in Gen. No. 14451.

Dated Chicago, January 15th, 1878.

McCOY & PRATT,
Sol's of Henry J. Traver.

167 FRANK J. SMITH,
Sol'r of Mary A. Pearson.

(Endorsed:) Filed Jan'y 17, 1878. W. H. Bradley, clerk.

Afterwards, to wit, on the twenty-eighth day of February, A. D. 1878, came L. C. Paine Freer, John Borden, and William Borden, by their solicitor, and filed in said clerk's office their answer to the bill of comlaint of Henry J. Traver in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

The joint and several answer of L. C. Paine Freer, John Borden, and William Borden, three of the defendants to the bill of complaint of Henry J. Traver, complainant.

These defendants, saving & reserving, &c., in answer to said bill,

say, on information and belief, that said Michael Traver & Henry J. Traver made the purchase of the premises in the bill mentioned, & having received a deed therefor at the same time, & on or about the 19th day of December, A. D. 1870, by the certain trust deed of themselves & wives of that date conveyed the said premises to Enos Ayers, as trustee therein, to secure sundry
168 notes therein described; that thereupon said Travers made a subdivision of said premises into three blocks, with streets and alleys, said block one containing 43 lots, said block two containing 48 lots, & said block three containing 44 lots, the map of which subdivision was recorded in the recorder's office of Cook county, in the State of Illinois, on or about the 6th day of May, A. D. 1872; that afterwards, and on or about the 8th day of February, A. D. 1873, the said trustee, Enos Ayres, & said John Dickson, then the holder of the indebtedness secured by said trust deed, by their deed of release of that date—recorded in said recorder's office on the 14th day of February, A. D. 1873—conveyed & released to said Henry J. Traver and Michael Traver all right, title, & interest acquired by said trust deed in & to block three (3) in said subdivision; that afterwards, and on or about the 29th day of January, A. D. 1875, the said Enos Ayres, with one Oswell A. Bogue, then the holder of the notes then unpaid, secured by said trust deed, by their deed of release of that date, & recorded in said recorder's office on the 19th day of February, A. D. 1875, conveyed and released block two in said subdivision from the lien & charge of said trust deed, by conveying & releasing to said Michael Traver & Henry J. Traver, or thereby purporting so to do, all interest by them, said Ayres & Bogue, then had or held in said block two, by virtue of said trust deed; that on or about the 2d day of Sep-
169 tember, A. D. 1872, the said Henry J. Traver & Michael Traver by the general warranty deed of themselves & wives of that date, recorded in said recorder's office the 12th day of September, A. D. 1872, sold and conveyed to one Charles M. Earl, in fee-simple, lots thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36), (with other lots), in block two in said subdivision; that thereafter & on or about the 28th day of December, A. D. 1872, said Earl, by the general warranty deed of himself & wife of that date, recorded in said recorder's office on the 7th day of January, A. D. 1873, sold & conveyed the above-mentioned lots in said block two (2) to one James C. Hyde; that afterwards one Mary Ann Pearson & John Pearson having acquired title in fee to said lots thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36), in said block two by purchase & conveyance thereof from or under said Hyde, on or about the 4th day of November, A. D. 1873, by their certain trust deed of that date, & about that time, recorded in said recorder's office, conveyed said last-named four lots in fee-simple to said Thomas D. Snyder, as trustee therein, with said L. C. Paine Freer as successor in trust therein, to secure the sum of $1,500 & interest thereon, evidenced by the *the* certain promissory note of the said Mary

170 Ann & John Pearson, of even date with said last-named trust deed, and drawn payable to the order of said James C. Hyde five years thereafter, with interest at the rate of 8 per cent. per annum, payable half-yearly, which note & trust deed, shortly after the making of the same, & before the bringing of said bill herein, upon due endorsement, delivery, & transfer thereof, & in due course of business, & for value, came into the hands of one Philip W. Dederick, of Albany, in the State of New York, & who is the owner & holder of the same; that on or about the 2nd day of November, A. D. 1874, said Hyde, by his certain trust deed of that date, & recorded in said recorder's office on the 27th day of November, A. D. 1874, conveyed said lots thirty (30), thirty-one (31), and thirty-two (32), in said block two, in fee to said William Borden & John Borden, as trustees therein, in trust, to secure the certain promissory note of said Hyde, of even date with said trust deed, drawn payable to the order of said Philip W. Dederick one year after its date, with interest until paid at the rate of ten per cent. per annum, payable half-yearly, which note very shortly thereafter, by due endorsement & transfer, for value, & in due course of business, & before its maturity, came into the hands of one Aaron M. Dederick, who is now the owner thereof, which note is still unpaid; that on or about the 23rd day of July, A. D. 1872, said Michael Traver

171 & Henry J. Traver by the general warranty deed of themseles, & wives of that date, recorded in said recorder's office, on the 8th day of August, A. D. 1872, conveyed in fee-simple lots thirty-seven (37), thirty-eight (38), & thirty-nine (39), in block three (3) aforesaid, to one William C. Gibson, who thereafter & on or about the 28th day of March, A. D. 1873, by his deed of that date or thereabouts, & about that time recorded in said recorder's office, conveyed said last named three lots in fee-simple to one William McKim, who afterwards, & on or about the 9th day of April, A. D. 1873, by his deed of that date, & about that time recorded in said recorder's office, conveyed said last named three lots to said James C. Hyde, who on or about the 4th day of October, A. D. 1873, by his certain trust deed of that date, recorded in recorder's office, on the 15th day of October, A. D. 1873, conveyed said last named three lots in fee-simple to said L. C. Paine Freer, as trustee therein, in trust to secure the certain promissory note of said James C. Hyde, of even date with said trust deed, drawn payable to the order of said Philip W. Dederick in the sum of two thousand dollars, three years after the date thereof, with interest at the rate of ten per cent. per annum, payable half yearly, which notes said Dederick still holds & the same is still unpaid; that by conveyance from or under

172 said Michael Traver & Henry J. Traver, one Garret Garretson became the owner in fee-simple of lots forty-two (42) & forty-three (43), in said block three (3), & being such owner, he on or about the first day of October, A. D. 1873, by his certain trust deed of that date, & about the same time recorded in said recorder's office, conveyed said last named two lots in fee-simple to said Thomas D. Snyder, as successor in trust therein as trustee therein, with said John Borden in trust to secure the certain promissory

note of said Garretson of even date with said trust deed drawn payable to the order of said James C. Hyde, in the sum of two thousand dollars, three years after its date, with interest at the rate of nine per cent. per annum, payable half yearly, which last named note, shortly after the making thereof, by endorsement & transfer of the same for value, & in due course of business came to the hands of said Philip W. Dederick, & for non-payment of said note said trust deed has been since foreclosed, & said last named two lots conveyed to said Dederick in fee-simple absolute; that said lots in said blocks two & three were by deed & otherwise, duly released & discharged from said Ayres' trust deed & wholly freed therefrom; that the several persons acquiring title & an interest in said lots as aforesaid, were entitled to hold the same wholly freed therefrom; that they respectively acquired their title to
173 said lots respectively, for value in good faith and without notice of the several matters in the bill alleged; that the said Dedericks acquired the indebtedness secured by said trust deeds for value in good faith, and without notice of the several matters in the bill alleged as impeaching their rights and interests in the premises, and without notice of anything effecting the title of any of the said lots not of record in said recorder's office at the time of acquiring their interests, respectively, as aforesaid, and with reliance upon said record; that these defendants are mere naked trustees, without any personal or beneficial interest on their own behalf in any of the matters involved in this suit; that said Dedericks are necessary parties thereto, and for want of being made so, said bill is defective for want of proper parties thereto, and these defendants crave to be allowed the same benefit of this objection as if they had duly set up the same by proper plea or demurrer to said bill; and these defendants, on information and belief, deny all matters in said bill contained not herein otherwise well and sufficiently answered, confessed, and avoided, traversed and denied, and pray to be hence dismissed with their reasonable costs, by them most unjustly sustained.

JOHN BORDEN,
WILLIAM BORDEN, AND
L. C. PAINE FREER.
By JOHN BORDEN,
Their Sol'r and Agt.

JOHN BORDEN, *Of Counsel.*

(Endorsed:) Filed Feb'y 28, 1878. Wm. H. Bradley, cl'k.

174 Afterwards, to wit, on the twenty-eighth day of May, A. D. 1878, came Charles A. Richardson, complainant, and William Borden, John Borden, and L. C. Paine Freer, defendants, by their solicitors, and filed in said clerk's office their stipulation in said entitled causes, which said stipulation is in the words and figures following, to wit:

Stipulation

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois.

CHARLES A. RICHARDSON }
v. } Bill.
HENRY J. TRAVER, *& al.* }

Consolidated.

HENRY J. TRAVER }
v. } Bill.
MICHAEL TRAVER *& al.* }

It is hereby stipulated by the undersigned that the several deeds shown in Exhibit "A," hereto annexed, were made and recorded as therein shown; that the defendants, William Borden, John Borden, and L. C. P. Freer are merely trustees, as shown in said exhibit, and have no personal interest in the matters in controversy in this suit; that the defendant, Thomas D. Snyder, as to the trust deed from Mary Ann Pearson and husband to him, No. 5 of said exhibit, and as to the trust deed from Garretson to him, No. 16 of said exhibit, was and is, only a trustee as above; that the
175 indebtedness and the notes evidencing the same, secured by the trust deeds shown in said exhibit as numbers five (5), six (6), twelve (12), and sixteen (16) respectively, was or were, purchased and acquired and now held by Peter K. Dederick, Philip W. Dederick, and Aaron M. Dederick, of Albany, New York, or one of them, before maturity and before the commencement of this suit in the usual course of business, for value, in good faith, and without notice of the several matters involved in this litigation and relied upon to sustain the claims set forth in the said bills, except that they had notice by the record in the recorder's office of Cook county of all deeds and mortgages there recorded. The appearance of the above named Dedericks is hereby entered in the above suits, as defendants' bill of Richardson may be amended so as to make them parties def'ts at any time, and Mr. Borden's answer is to be treated as their answer also.

This stipulation is to be used only in this suit.

May 25, 1878.

F. C. INGALLS,
Sol'r for Chas. A. Richardson.
JOHN BORDEN,
Sol'r for self, Wm. Borden, L. C. P. Freer, and said Dedericks.

EXHIBIT "A."

176 1. Enos Ayres and Oswell A. Bogue to Henry J. Traver, Clarissa A. Traver, Michael Traver, and Mary Jane Traver. Doc. 14712.—Release deed dated Jan'y 29, 1875, and recorded Feb'y 19, 1875, in Book 419, page 384. Release block 2, in Traver's

subd'n of the E. 15.92 acres of the W. 30.92 acres of that part of the S.E. ¼ lying S. of Ogden avenue of section 23, T. 39, R. 13 E. from instrument. Recorded in Book 655, page 517.

2. Henry J. Traver and wife and Michael Traver and wife to Charles M. Earl. Stamp, $15.00. Doc. 55705.—Warranty deed dated Sept. 2, 1872, and recorded Sept. 12, 1872, in Book 139, page 330. Consid'n, $15,000.00. Convey lots 10 to 39 inclusive, in Book 2 in Traver's sub'dn of 15.42 acres in the S.E. ¼ of section 23, T. 39, R. 13 E.

3. Charles M. Earl and wife to James C. Hyde. Doc. 77325.—Warranty deed dated Dec'r 28, 1872, and recorded Jan'y 7, 1873, in Book 198, page 422. Consid'n, $16,000.00. Convey lots 10 to 39 inclusive, in block 2 in Traver's subdivision of the E. 15.92 acres of the W. 30.92 acres of that part of the S.E. ¼ S. of Ogden avenue of section 23, T. 39, R. 13 E.

4. James C. Hyde to Mary Ann Pearson. Doc. 135391.—Warranty deed dated Nov'r 4, 1873, and recorded Nov. 12, 1873
177 in Book 314, page 164. Consid'n, $5,500.00. Conveys lots 33 to 36 inclusive, in block 2 in Traver's subdivision of the E. 15.92 acres of the W. 30.92 acres of the S.E. ¼ S. of Ogden avenue of section 23, T. 39, R. 13 E.

5. Mary Ann Pearson and her husband to Thomas D. Snyder. Doc. 135260.—Trust deed dated Nov'r 4, 1873, and recorded Nov'r 11, 1873, in book 255, page 167, to secure payment of $1,500.00. Convey lots 33 to 36, inclusive, in block 2, in Traver's subd'n of the E. 15.92 acres of the W. 30.92 acres of the S. E. ¼ S. of Ogden avenue of section 23, T. 39, R. 13 E.

6. James C. Hyde to John Borden and William Borden. Doc. 2606.—Trust deed dated Nov'r 2, 1874, and recorded Nov'r 27, 1874, in book 389, page 506, to secure payment of $2,000. Conveys lots 30, 31 and 32, in block 2, in Traver's subd'n of the E. 15.92 acres of the W. 30.92 acres S. of Ogden avenue of section 23, T. 39, R. 13 E.

7. John Borden and William Borden to Aaron M. Dedrick. Doc. 135034.—Trustee's deed dated May 15, 1877, and recorded May 16, 1877, in book 582, page 460. Consid'n, $2,000.00. Convey lots 30, 31 and 32, in block 2, in Traver's subd'n of E. 15.92 acres of W. 30.92 acres of that part of S. E. ¼ of Ogden avenue of sect'n 23, T. 39, R. 13 E., under power of sale contained in trust deed recorded in book 389, page 506.

178 8. Enos Ayres, trustee, and John Dickson to Henry J. Traver and Michael Traver. Doc. 84023.—Release deed dated Feb'y 8, 1873, and recorded Feb'y 14, 1873, in book 214, page 156. Release block 3 in Traver's subdivision of the W. ½ of the S. E. ¼ of section 23, T. 39, R. 13 E., S. of Ogden avenue, except the W. 15 acres, the E. 10 acres, and the railroad, (plat recorded in book 1 of plats, page 59,) from instrument recorded in book 655, page 577.

9. Henry J. Traver and wife and Michael Traver and wife to William C. Gibson. Stamp, $2.00. Doc. 48351.—Warranty deed dated July 22, 1872, and recorded August 8, 1872, in book 139, page 158. Consid'n, $1,800.00. Convey lots 37, 38 and 39, in block

3, in Traver's sub'n of the E. 15.92 acres of the W. 30.92 acres of that part of Ogden avenue or southwestern plank road of the S. E. ¼ of section 23, T. 39, R. 13 E.

10. William C. Gibson and wife to William McKim. Doc. 92210.—Warranty deed dated M'ch 28, 1873, and recorded M'ch 29, 1873, in book 169, page 211. Consid'n, $2,400.00. Convey lots 37, 38 and 39, in block 3, in Traver's subd'n of the E. 15.92 acres of the W. 30.92 acres of that part of the S. E. ¼ lying S. of Ogden avenue of section 23, T. 39, R. 13 E.

179 11. William McKim to James C. Hyde. Doc. 94860.—Warranty deed, dated April 9, 1873, and recorded April 10, 1873, in book 221, page 506. Consid'n, $1,600.00. Conveys lots 37, 38, and 39, in block 3, in Traver's subdivision of the E. 15.95 acres of the W. 30.92 acres of the S. E. ¼ S. of Ogden avenue of section 23, T. 39, R. 13 E.

12. James C. Hyde to L. C. P. Fleer. Doc. 130919.—Trust deed dated Oct'r 4, 1873, and recorded Oct'r 15, 1873, in book 255, page 151, to secure payment of $2,000. Conveys lots 37, 38, and 39, in block 3 in Traver's subdivision of the E. 15.42 acres of the W. 30.92 acres of the S. E. ¼ S. of Ogden avenue, of section 23, T. 39, R. 13 E.

13. Henry J. Traver & wife to Michael Traver. Doc. 77321.—Quit-claim deed, dated Dec'r 20, 1871, and recorded Jan'y 7, 1873, in book 113, page 227. Consid'n, $100.00. Convey lots 1 to 7 inclusive, and 34, 40, 41, 42, and 43, in block 3, and lots 1 to 9, inclusive, and 40 to 48, inclusive, in block 2 of Traver's subd'n of the E. 15.92 acres of the W. 30.92 acres of that part of S. E. ¼ S. of Ogden avenue, of section 23, T. 39, R. 13 E.

14. Michael Traver & wife to James C. Hyde. Doc. 77325.—Warranty deed, dated Dec'r 28, 1872, and recorded Jan'y 7,
180 1873, in book 198, page 422. Consid'n, $16,000.00. Convey lots 1 to 7 inclusive and 40 to 43 inclusive, in block 3, and lots 1 to 9 inclusive, and 40 to 48 inclusive, in block 2, in Traver's subdivision of the E. 15.42 acres of the W. 30.92 acres of that part of S. E. ¼ S. of Ogden avenue, of section 23, T. 39, R. 13 E.

15. James C. Hyde, widower, to Garret Garretson. Doc. 192692.—Warranty deed dated Oct'r 1, 1873, and recorded Sept. 26, 1874, in book 399, page 367. Consid'n, $4,000.00. Conveys lots 42 and 43 in block 3, in Traver's subd'n of the E. 15.92 acres of the W. 30.92 acres of that part of S. E. ¼ lying S. of Ogden avenue, of section 23, T. 39, R. 13. E.

16. Garret Garretson to Thomas D. Snyder. Doc. 130918.—Trust deed dated Oct'r 1, 1873, and recorded Oct'r 15, 1873, in book 255, page 150. To secure payment of $2,000. Conveys lots 42 and 43 in block 3, in Traver's subdivision of the E. 15.92 acres of the W. 30.92 acres of the S. E. ¼ S. of Ogden avenue, of section 23, T. 39, R. 13 E.

17. Thomas D. Snyder to Peter K. Dederick. Doc. 165262.—Trustee's deed dated Juanuary 10, 1878, and recorded January 10, 1878, in book 792, page 102. Consid'n, $1,800.00. Conveys lots 42 and 43 in block 3, in Traver's subdivision of the E. 15.92 acres of the

W. 30.92 acres of that part of the S. E. ¼ lying S. of Ogden
181 avenue, of section 23, T. 39, R. 13, under power of sale contained in trust deed dated dated October 1, 1873, and recorded October 15, 1873.

The foregoing numbers, from 1 to 17, inclusive, taken from the books of original entries now in our hands.

Chicago, May 4th, 1878.

HANDY, SIMMONS & CO.

182 James C. Hyde to Henry L. Hammond. Doc. 77323. Trust deed dated Dec'r 28, 1872, and recorded Jan'y 7, 1873, in book 180, page 91. To secure payment of $6,000.00 and interest. Conveys lots 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39, all in block 2, in Traver's subdivision of the E. 15.92 acres of W. 39.92 acres of that part of the southeast quarter of section 23, T. 39 N., R. 13 E. of the 3d P. M., lying east of Ogden avenue or southwestern plank road.

Henry L. Hammond to James C. Hyde. Doc. 17372. Release deed, dated March 9, 1875, and recorded March 10, 1875, in book 419, page, 453. Releases all interest acquired by trust deed bearing date Dec'r 28, 1872, and recorded in recorder's office of Cook county, Illinois, "as Docket number 77323," in book 184 of records, page 303, to a part of the premises therein described, to wit, situate in Chicago, Cook county, Ills., viz.: Lots 30, 31, 32, 33, 34, 35, and 36 of block 2, in Traver's subdivision of the east 15.92 acres of the west 30.92 acres of that part of the southeast quarter of section 23, T. 39 N., R. 13 E. of the 3d P. M., lying south of Ogden avenue or the southwestern Plank road.

The foregoing taken from the book of original entries now in our hands.

HANDY, SIMMONS & CO.

(Endorsed): Filed May 28, 1878. W. H. Bradley, cl'k.

183 And on that same day, to wit, the twenty-eighth day of May, A. D. 1878, a stipulation was filed in said clerk's office in said entitled cause, which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court thereof.

HENRY J. TRAVER
vs.
MICHAEL TRAVER *et al.*
and
RICHARDSON
vs.
HENRY J. TRAVER *et al.*
} In Chancery. Consolidated.

It is hereby stipulated that neither of the complainants in the

above entitled cause upon the final hering thereof will not ask for a decree against lots 30, 31, 32, 33, 34, 35, and 36, inclusive, in block (2), nor against lots 37, 38, 39, 42, and 43, inclusive, in block three, all in Traver's subdivision, as described in the pleadings in said cause, nor against either of the following named defendants, viz: John Borden, William Borden, and L. C. Paine Freer, P. K. Dederick; that if they should desire a decree against said lots or either of them, or against the above named defendants or either of them upon said final hearing, it is hereby, in that case, further stipulated, that the above named defendants or either shall
184 have full and ample time to take such proof in the case as may be deemed necessary for the proper defence of themselves and each of them, as well as for the protection of the said lots.

May 6th, 1878. McCOY & PRATT,
Sols. for H. J. Traver.

(Endorsed:) Filed May 28, 1878. Wm. H. Bradley, cl'k.

Afterward, to wit, on the thirtieth day of May, A. D. 1878, in the record of the proceedings of said court in said entitled cause, before the honorable Henry W. Blodgett, district judge, appears the following entry, to wit:

CHARLES A. RICHARDSON
vs.
HENRY J. TRAVER *et al.* } In Chancery.

Now comes the said complainant, by leave of court for that purpose first had and obtained, and amends his said bill of comcomplaint, as follows: By adding the names of Peter K. Dederick, Philip W. Dederick, and Aaron M. Dederick to the parties named as defendants at the commencement of the bill; also by adding, in connection therewith, the following allegation: "That said Peter K. Dederick, Phillip W. Dederick, Aaron M. Dederick, and each of them, are residents of the city of Albany, and citizens of the State of New York."

Also by adding to the stating part of the bill, after the
185 statement of the equities of said complainant, the following allegation: "Your orator further shows that said Peter K. Dederick, Philip W. Dederick, and Aaron M. Dederick, have, or claim to have, some right or interest in some portion of the land described in the deed of trust above mentioned, but your orator avers that such right or interest, if any such exist, is subject and subordinate to the lien of your orator's deed of trust aforesaid."

Also by adding the names of said Peter K. Dedrick, Philip W. Dedrick, and Aaron M. Dedrick to the parties named as defendants in the prayer for process of subpœna.

And on that same day, to wit, the thirtieth day of May, A. D. 1878, came Charles A. Richardson, complainant, by his solicitor, who,

by leave of the court first had and obtained, and filed his amendment to the bill of complaint herein, which said amendment is in the words and figures following, to wit:

Amendment to Bill.

In the Circuit Court of the United States for the Northern District of Illinois.

CHARLES A. RICHARDSON
vs.
HENRY J. TRAVER, CLARISSA S. TRAVER, MICHAEL Traver, Mary Jane Traver, Enos Ayres, Henry L. Hammond, L. C. P. Freer, Alvin Hulbert, Gwynn Garnett, John Borden, William Borden, Michael Weidinger, Nathaniel S. Goss, James C. Hyde, Mary A. Pearson, Caroline E. Jones, Mary E. Bruce, Oswell A. Bogue, Hugh A. White, John Baldwin, Jr., Lockhart R. Carswell, Frederick A. Weage, and Samuel A. Sawyer.

186 In Chancery.

Now comes the said complainant, by leave of court for that purpose first had and obtained, and amends his said bill of complaint as follows:

By adding the names of Peter K. Dederick, Philip W. Dederick, and Aaron M. Dederick to the parties named as defendants, at the commencement of the bill; also by adding, in connection therewith, the following allegation: "That said Peter K. Dederick, Philip W. Dederick, Aaron M. Dederick, and each of them, are residents of the city of Albany, and citizens of the State of New York."

Also by adding to the stating part of the bill, after the statement of the equities of said complainant, the following allegation:

"Your orator further shows that said Peter K. Dederick, Philip W. Dederick, and Aaron M. Dederick have, or claim to have, some right or interest in some portion of the land described in the deed of trust above mentioned, but your orator avers that such right or interest, if any such exists, is subject and subordinate to the lien of your orator's deed of trust aforesaid."

Also by adding the names of said Peter K. Dederick, Philip
187 W. Dederick, and Aaron M. Dederick to the parties named as defendants in the prayer for the process of subpœna.

F. C. INGALLS,
Sol'r & of Counsel for Complainant.

By stipulation between said complainant, Charles A. Richardson, and said defendants, Peter K. Dederick, Philip W. Dederick, and Aaron M. Dederick, the answer of John Borden, heretofore filed herein, is to stand as the answer of said Philip W., Peter K., and Aaron M. Dederick to said complainant's amended bill, and the

replication of complainant thereto as replication to answer of said Dedericks.

JOHN BORDEN,
For Dedericks.
F. C. INGALLS,
Sol. for Compl't.

(Endorsed:) Filed May 30, 1878. Wm. H. Bradley, clerk.

Afterwards, to wit, on the twenty-fifth day of September, A. D. 1878, came Henry J. Traver, complainant, by his solictors, and filed in said clerk's office his replication to the answer of Charles A. Richardson in said entitled cause, which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, }
Northern District of Illinois. }

188 In the Circuit Court of the United States of the Northern District of Illinois.

HENRY J. TRAVER
v.
MICHAEL TRAVER *et al.*
CHAS. A. RICHARDSON
v.
HENRY J. TRAVER *et al.*
} In Chancery.

The replication of Henry J. Traver, complainant, to the answer of Charles A. Richardson to the bill and the amended bill of said complainant.

The said repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto, saith, that he does and will aver, maintain, and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant; and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

HENRY J. TRAVER,
By McCOY & PRATT,
Solicitors for Complainant.

189 (Endorsed:) Filed Sept. 25, 1878. Wm. H. Bradley, cl'k.

And on that same day, to wit, the twenty-fifth day of September, A. D. 1878, came Henry J. Traver, complainant, by his solicitors, and filed in said clerk's office his replication to the answers of Samuel J. Sawyer, Mary A. Pearson, Nathaniel S. Goss, John Borden, William Borden, and L. C. Paine Freer, in said entitled cause, which said replication is in the words and figures following, to wit:

Replication.

Circuit Court of the United States for the Northern District of Illinois.

HENRY J. TRAVER *v.* MICHAEL TRAVER *et al.*

CHARLES A. RICHARDSON *v.* HENRY J. TRAVER *et al.*

The replication of Henry J. Traver complainant, to the answers of Samuel J. Sawyer, Mary A. Pearson, Nathaniel S. Goss, John Borden, William Borden, and L. C. Paine Freer to the bill of complaint filed in the first cause above named.

This repliant, saving and reserving to himself all and all manner of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answers of the said defendants, for replication thereunto saith, that he does and will aver,
190 maintain, and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant without this; that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

McCOY & PRATT,
Solicitors for Complainant.

(Endorsed:) Filed Sept. 25, 1878. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the twenty-sixth day of September, A. D. 1878, in the record of the proceedings of said court in said entitled cause, before the Honorable Henry W. Blodgett, district judge, appears the following entry, to wit:

CHARLES A. RICHARDSON
vs. } In Chancery.
HENRY J. TRAVER *et al.*

Now come the parties herein, by their solicitors, and the complainant in the original bill, by Mr. Ingalls, his solicitor,
191 moves the court to set this cause down for hearing on the pleadings herein. And the defendant, Henry J. Traver, by

Mr. McCoy, his solicitor, moves the court for time to take proofs herein. It is thereupon ordered by the court that leave be given the defendant, Henry J. Traver, to take additional testimony until the first day of November next. And thereupon leave is given the said Charles A. Richardson to amend his answer to the bill of complaint of Henry J. Traver herein in accordance with the facts, and it is ordered by the court that this cause be set down for hearing on the first Monday of November next. And by agreement said testimony may be taken on notice and by parol.

Afterward, to wit, on the thirty-first day of October, A. D. 1878, came Charles A. Richardson, by his solicitor, and filed in said clerk's office his amendment to answer in said entitled cause, which said amendment is in the words and figures following, to wit:

Amendment to Answer.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

Amendment to the answer of Charles A. Richardson, one of the defendants, to the bill of complaint of Henry J. Traver, complainnat.

The said Charles A. Richardson, by leave of the court here
192 for that purpose first had and obtained, comes and amends his said answer as follows:

On the second page of the answer, in the twenty-second line from top of page, after the word "Ayres," insert the words "except as hereinafter mentioned."

On the seventh page of the answer, after the paragraph ending on the twelfth line from the top of page, insert the following:

"And this defendant further answering says, that on or about the twenty-eighth day of December, A. D. 1872, this defendant, who was then, and has ever since been, a resident of the State of Massachusetts, remitted the sum of ten thousand dollars to the defendants, Hammond & Bogue, at Chicago, in the State of Illinois, to be loaned by them for this defendant, upon security of the first class on real estate, and which was to be a first lien thereon, and to be selected and approved by them. That said Hammond and Bogue, upon receiving said money, loaned the same to the defendant, James C. Hyde, and received from said Hyde as security for such loan two notes, bearing date on said 28th day of December, A. D. 1872, executed by said defendant Hyde, and payable to the defendant, Michael Traver, in three years after said date, with interest at eight per cent. per annum, one of said notes being for the sum of six thousand dollars, and secured by a deed of trust executed by said Hyde,
193 bearing even date with said notes, to said Henry L. Hammond, as trustee, on the land and premises therein described as lots ten (10) to thirty-nine (39), both inclusive, in block two (2) of Traver's subdivision mentioned in said bill, and the other of said notes being for the sum of four thousand dollars, and secured by a like deed of trust, executed by said Hyde to said Hammond as trustee, and bearing the same date, on lots one (1) to nine (9), both in-

clusive, and lots forty (40) to forty-eight (48), both inclusive, in said block two (2), and which said deeds of trust were acknowledged on the sixth day of January, A. D. 1873, and recorded in the recorder's office of said county on the seventh day of January, A. D. 1873. That the said notes were both duly endorsed by said Michael Traver when received by this defendant. And this defendant avers that said two deeds of trust were, by their terms, expressly made as first and prior incumbrances on the lands therein respectively described, and that each of said deeds contained the usual covenants of warranty, and that the said Hyde therein covenanted, among other things, that he was well seized of the premises described in said respective deeds in fee-simple, and had good right and lawful power and authority to grant, bargain, and sell the same in manner and form as by said deeds conveyed, and that the said premises
194 were free and clear of all liens and incumbrances whatsoever.

And this defendant avers that at the time when said money was loaned, and said notes and deeds of trust were received as security for the same by this defendant, the said James C. Hyde was the owner in fee-simple of the land described in said two deeds of trust, and that his title to the same was acquired by two warranty deeds bearing date on the 28th day of December, A. D. 1872, one of which deeds was executed by the said defendant Michael Traver and wife, conveying to said Hyde that part of said land described as lots one (1) to nine (9) inclusive, and lots forty (40) to forty-eight (48) inclusive, in block two (2) of Traver's subdivision aforesaid; and the other of which said deeds was executed by one Charles M. Earl and wife, conveying to said Hyde that part of said land described as lots ten (10) to thirty-nine (39), both inclusive, in said block two (2); that said deeds each contained the usual covenants of warranty, and among other things a covenant that the premises described in said deeds respectively were free and clear from all liens and incumbrances whatever.

And this defendant further avers that the said Charles M. Earl, at the time of the execution of his said warranty deed to said Hyde, was the owner in fee-simple of the land described
195 in his said deed, and that he derived his title to the same by a warranty deed executed by said complainant Henry J. Traver and wife and said defendant Michael Traver and wife, bearing date on the second day of September, A. D. 1872, and which contained the usual covenants of warranty on the part of said grantors, who therein covenanted among other things, with said grantee, his heirs and assigns, that the said premises thereby conveyed were free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever.

And this defendant further avers, that the said Michael Traver, at the time of the execution of his said warranty deed to said Hyde, was the owner of the land therein described in fee-simple; that by the deed mentioned in said bill, executed by John Dickson, on the nineteenth day of December, A. D. 1870, the whole of the land now known as Traver's subdivision, was conveyed by said

Dickson to said Henry J. and Michael Traver, as tenants in common, and that afterwards, on or about the twentieth day of December, A. D. 1872, said complainant, Henry J. Traver and wife, by deed of that date, conveyed to said Michael all the interest of said grantors in the land and premises therein described as lots one (1) to nine (9) inclusive, and lots forty (40) to forty-eight (48) inclusive, in said block two (2), being the same land described in the deed
196 from said Michael and wife to said Hyde, and that in said deed, so executed by said Henry J. Traver and wife to said Michael, the said complainant, Henry J. Traver, did covenant among other things with said Michael, his heirs and assigns, that he had not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, or by means whereof the said premises therein described, or any part thereof, then were, or at any time thereafter, should or might be impeached, charged, or incumbered in any way or manner whatsoever.

And this defendant further avers that when he made his said loan, upon the security of the two deeds of trust aforesaid, he had no actual knowledge whatever that there was in existence any prior lien or incumbrance on the lands conveyed by said deeds in trust as security for his said loan, but supposed and fully believed that his own security was a first and prior lien on said premises; but that in fact the said incumbrance given by said Henry and Michael to said Dickson, at the time of their purchase of the land from him in December, A. D. 1870, remained in force and was then a first and prior encumbrance on the said Travers' subdivision, and this defendant is informed and believes that the said Hammond and Bogue, while receiving the security in behalf of this defendant as a first and
197 prior security and treating it as such, were nevertheless aware that the said deed of trust given by said Travers to said defendant, Enos Ayres, to secure a part of the purchase money to said Dickson was still in existence, and a prior lien on the whole of said subdivision for the security of the four notes described therein, but that it was the understanding between said Hammond and Bogue and said Hyde, that the money so loaned by this defendant should be applied in part payment of said first incumbrance, and that releases were to be forthwith procured by said Hyde, whereby the lien of said deed of trust executed to said Ayres, as trustee, should be immediately removed from said block two (2) of said subdivision, on which this defendant's security rested.

And this defendant avers that the said money so loaned by this defendant was immediately afterwards applied by said Hyde as a payment to said Dickson on said first incumbrance, and that said Hyde soon afterwards procured a release of block three (3) of said subdivision from said Dickson incumbrance, but neglected and failed to procure a release of said block two (2), or any part thereof. That said Hammond and Bogue took it for granted that said Hyde had procured the release of said block two, in accordance with their understanding, and fully believed that he had done so, until afterwards, on or about the fifteenth day of January, A. D. 1875, when
198 they were informed that said Dickson incumbrance still re-

mained a first lien on said block two (2) for the security of two of said purchase money notes then remaining unpaid. That said Hammond and Bogue then finding that this defendant's security was in jeopardy, in order to protect him, immediately substituted the prior security in place of that which had been first taken for this defendant, as they were authorized and required in such case to do; and the said Hyde agreeing to pay a sufficient sum on said Dickson notes to discharge the interest then due, and reduce the principal of the same to the sum of ten thousand dollars, the said Dickson notes and deed of trust were taken by said Hammond and Bogue in behalf of this defendant in lieu of the former security held by him. And in order to facilitate the matter, and without any intent or purpose whatever to do any wrong or injury to said complainant, and without notice of any alleged equities of said complainant, the said Bogue, at the instance and request of said Hyde, consented to the release of said block two (2) from the lien of said Dickson deed of trust given to Ayres, as trustee, which this defendant is informed and believes and avers the said Hyde had the right to procure, and that afterwards the said Hammond, as trustee, in the two deeds of trust originally given to secure the
199 defendant's loan, released all of the land thereby conveyed to him as such trustee, except lots twenty (20) to twenty-nine (29), inclusive, in said block two (2), and would have proceeded to release those lots also, but had not been requested so to do up to the time when said complainant's said bill was filed, when, becoming aware of the claims and charges alleged therein, he took no further action in the premises.

And this defendant avers that during all the time aforesaid he resided in the State of Massachusetts, at a distance from Chicago, and knew but very little personally in regard to Chicago securities, and that he relied and depended upon said Hammond and Bogue wholly, from the first, to look after and attend to his interests in Chicago and see that they were at all times properly and adequately secured; and this defendant fully approved and ratified the action of said Hammond and Bogue in making the change and substitution of securities in his behalf as aforesaid.

And this defendant avers that at and before the time of the taking of the said Dickson incumbrance by this defendant, as aforesaid, he being the holder of a junior incumbrance on said block two, the said complainant, Henry J. Traver and said Michael Traver, were both bound by the covenants in their deeds aforesaid, to protect this defendant against the said Dickson incumbrance.
200 And this defendant denies that any such arguments were made between said complainant and said Michael Traver, or between said Michael and said Hyde, as are set up and alleged in said bill. And this defendant avers, that if any such alleged agreements were made, they were mere parol agreements or understandings; that no note or memorandum thereof was ever made in writing, or signed by any of the parties thereto, or by any person lawfully thereunto authorized by them or any of them; that, if any such alleged agreements were made, such agreements were so made,

respectively, before the execution of said deeds from said Henry J. Traver to said Michael Traver, and from said Michael to said Hyde, alleged in said bill to have been executed in pursuance of such agreements; that said alleged agreements are wholly inconsistent with, and contrary and repugnant to the covenants and agreements in said deeds contained, and void by reason of such repugnance, and because they were parol agreements which are sought by said complainant to use for the purpose of overriding the written covenants and agreements in said deeds. That said alleged agreements are entirely nugatory, as well by reason aforesaid, as under the statute, commonly called the statute of frauds of the State of Illinois, whereby it is provided that no action shall be brought to charge any person upon any contract for the sale of any lands,
201 tenements, or hereditaments, or any interest in or concerning them, for a longer term than one year, unless such contract or some memorandum or note thereof shall be in writing, and signed by the parties to be charged therewith, or some other person thereunto by him lawfully authorized in writing; and that all declarations or creations of trust or confidences of any lands, tenements, or hereditaments shall be manifested and proved by some writing, signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be wholly void and of no effect.

And this defendant further avers, that said complainant is, and ought to be, estopped by his deeds aforesaid, and the covenants and agreements therein contained, from disputing or contesting the right of this defendant to take the said Dickson notes and deed of trust aforesaid in the manner aforesaid, and hold the same for the security of his said loans, and to foreclose the same against said block one (1) of said Traver's subdivision to pay and satisfy his loan aforesaid.

CHARLES A. RICHARDSON.

F. C. INGALLS, *Sol'r & of Counsel.*

(Endorsed): Filed Oct. 31, 1878. Wm. H. Bradley, cl'k.

202 Afterward, to wit, on the seventeenth day of April, A. D. 1880, a stipulation was filed in said clerk's office, which said stipulation is in the words and figures following, to wit:

Stipulation.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

CHARLES A. RICHARDSON *vs.* HENRY TRAVER *et al.* and HENRY TRAVER *vs.* MICHAEL TRAVER *et al.* } Consolidated.

It appearing that the land and premises mentioned in the pleadings in these cases, known as block one, in Traver's subdivision,

was on the 18th day of October, A. D. 1879, sold for taxes of 1877 and 1878, and that the sum of $420 or thereabouts is required to redeem said land from said sale before the expiration of six months from the time of sale.

It is therefore hereby stipulated and agreed between counsel for Charles A. Richardson and counsel for Henry J. Traver, that said Charles A. Richardson shall advance the said sum of money necessary to redeem as aforesaid, and that the same shall be and remain a charge on said land and upon any equity therein
203 which may be found to be in said Traver.

If it should appear as the fact that said Traver did pay said taxes before the sale, and that said sale is an error by reason of such payment, then this stipulation shall be of no effect otherwise to be in force.

April 17, 1880. McCOY & PRATT, *For Henry J. Traver.*
F. C. INGALLS, *For C. A. Richardson.*

(Endorsed:) Filed April 17, 1880. Wm. H. Bradley, Cl'k.

204 Afterwards, to wit, on the 11th day January, A. D. 1881, in the record of the proceedings of said court in said entitled cause, before the Honorable Thomas Drummond, circuit judge, appears the following entry, to wit:

Circuit Court of the United States for Northern District of Illinois.

TUESDAY, *January 11th, A. D.* 1881.

Present: The Hon. Thomas Drummond, circuit judge.

CHARLES A. RICHARDSON *vs.* HENRY J. TRAVER, CLARISSA S. TRAVER, MICHAEL Traver, Mary Jane Traver, Enos Ayres, Henry L. Hammond, L. C. P. Freer, Alvin Hulbert, Gwynn Garnett, John Borden, William Borden, Michael Weidinger, Nathaniel S. Goss, James C. Hyde, Mary A. Pearson, Caroline E. Jones, Mary E. Bruce, Oswell A. Bogue, Hugh A. White, John Baldwin, Jr., Lockhart R. Carswell, Frederick A. Weage, Peter K. Dederick, Aaron M. Dederick, Phillip W. Dederick, and Samuel A. Sawyer.	13171. In Chancery. Bill to Foreclose Mortgage.

Consolidated with the case of

HENRY J. TRAVER *vs.* MICHAEL TRAVER, JAMES C. HYDE, HENRY L. Hammond, Oswell A. Bogue, Enos Ayres, Mary Ann Pearson, Frank J. Smith, Alvin Hulbert, John Borden, William Borden, Frank J. Weidinger, N. S. Goss, Maria Shaw, L. C. P. Freer, Caroline E. Jones, Mary E. Bruce, Gwynne Garnett, and Charles A. Richardson.	14451. In Chancery. Bill for relief and Injunction.

205 On this day came said respective complainants and defendants,

by their respective solicitors, and the above consolidated causes having been heretofore argued by counsel, thereupon on consideration thereof, the court finds that in the cause of Charles A. Richardson, complainant, against Henry J. Traver and others, defendants, that the equities are with the defendant, Henry J. Traver, and it is therefore ordered, adjudged, and decreed, that said bill be and the same is hereby dismissed with costs to be taxed.

And the court finds in the cause of Henry J. Traver against Michael Traver, Charles A. Richardson, and others, that certain equities therein are with the complainant, Henry Traver, in that he is entitled to relief sought in his original and amended bill. That the said two notes dated December 19th, 1870, payable to John Dickson, one in four years after date and the other in five years after date, with interest thereon, together with the trust deed to Enos Ayers, as trustee, of the same date should not be enforced against said block one (1) in Traver's subdivision of the east
206 fifteen and $\frac{92}{100}$ ($15\frac{92}{100}$) acres of the west thirty-two and $\frac{92}{100}$ ($32\frac{92}{100}$) acres of that part of the southeast quarter ($\frac{1}{4}$) of section twenty-three (23) of township thirty-nine (39) north, in range thirteen (13) east, of the third principal meridian, lying south of Ogden avenue, in the county of Cook, and State of Illinois. Nor should the said notes be enforced in any form against the said Henry J. Traver.

It is therefore ordered, adjudged, and decreed that the said block one (1) in said Traver's subdivision be, and the same is hereby, discharged free and clear from any lien created by the said notes and trust deed, and that the said Henry J. Traver be and he is hereby discharged from all liability for or on account of the said two notes. And it is ordered that the said Henry J. Traver recover his costs herein.

Since this decree serves fully to protect said Henry J. Traver, it is hereby further ordered, adjudged, and decreed that the injunction issued in this cause be and the same is hereby dissolved.

It was agreed, on the hearing by the solicitors of complainant in each bill, that no decree would be asked against defendant, Samuel A. Sawyer, or the lots claimed by him in his answer, being lots one (1) to nineteen (19), in block two (2) of Traver's subdivision.
207 And the said Richardson thereupon prays an appeal to the Supreme Court of the United States from the decree rendered in the bill filed by him, as well as in the decree rendered in the bill filed by Henry J. Traver herein, which appeal is allowed on the said Richardson giving bond according to law. It was agreed between the parties that before the appeal was prayed in this case the bill herein of Henry J. Traver should be dismissed as to all the defendants, except James C. Hyde, Henry L. Hammond, Oswell A. Bogue, and Charles A. Richardson.

208 *Certificate of Evidence.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the circuit court of the United States for the northern district of Illinois. In Chancery.

CHARLES A. RICHARDSON
vs.
HENRY J. TRAVER, CLARISSA S. TRAVER, MICHAEL Traver, Mary Jane Traver, Enos Ayres, Henry L. Hammond, L. C. P. Freer, Alvin Hurlbert, Gwynn Garnett, John Borden, William Borden, Michael Weidinger, Nathaniel S. Goss, James C. Hyde, Mary A. Pearson, Caroline E. Jones, Mary E. Bruce, Oswell A. Bogue, Hugh A. White, John Baldwin, Jr., Lockhart R. Carswell, Frederick A. Weage, Peter K. Dederick, Aaron M. Dederick, Philip W. Dederick, and Samuel A. Sawyer. } No. 13071.

Consolidated with

HENRY J. TRAVER
vs.
MICHAEL TRAVER, JAMES C. HYDE, HENRY L. HAMmond, Oswell A. Bogue, Enos Ayres, Mary Ann Pearson, Frank J. Smith, Alvin Hurlbert, John Borden, William Borden, Frank J. Weidinger, N. S. Goss, Maria Shaw, L. C. P. Freer, Carolina E. Jones, Mary E. Bruce, Gwynn Garnett, and Charles A. Richardson. } No. 14451.

209 Be it remembered that on the hearing of the above entitled consolidated causes before the undersigned, Thomas Drummond, judge of said court, the following, and no other, evidence was introduced by the respective parties, and considered by the court.

Charles A. Richardson, complainant as aforesaid, read in evidence two (2) promissory notes, dated December 19, 1870, for $5,373 67-100 each, made by Henry J. Traver and Michael Traver, payable to the order of John Dickson, at the office of Ayres and Eoff, in Chicago, Illinois, one in 4 and the other in five years after date, with interest at 8 per cent. per annum, payable semi-annually, and each bearing interest at 10 per cent. per annum after maturity, and endorsements of each of said notes by John Dickson, the payee thereof, James C. Hyde and Snyder & Lee, and the endorsements thereon showing payments of interest. Said Richardson further read in evidence a trust deed of the same date as said notes, made by said Henry J. and Michael Traver and their wives to Enos Ayres, conveying the land described in said bill to said Ayres as trustee, to secure the two notes aforesaid, and two other notes of the same date, and for the same amount, made by and to the same

parties, and payable in 2 and 3 years from date, respectively,
210 and also the certificate of the record thereof endorsed thereon, said trust deed being recorded in the recorder's office of Cook county, Illinois, May 19, 1871, in book 655 of deeds, page 537.

Said Richardson further read in evidence the two notes made by James C. Hyde payable to Michael Traver, and endorsed by Michael Traver, dated December 28, 1872, both payable in three years from their date, with interest at 8 per cent. per annum, one for $6,000.00 and one for $4,000.00. Also the two deeds of trust and certificate of record thereof, of even date with said notes, executed by said Hyde to Henry L. Hammond as trustee, one conveying lots 10 to 39 inclusive, in block 2 of Traver's subdivision, to secure payment of the $6,000.00 note, and the other conveying lots 1 to 9 and 40 to 48 inclusive, to secure payment of the $4,000.00 note, said deeds being recorded in the recorder's office of said Cook county on the 7th day of January, 1873.

Said Richardson further read in evidence a deed of release dated February 8, 1873, by Enos Ayres, trustee, and John Dickson, of block three (3), Traver's subdivision, and the certificate of the record thereof endorsed thereon, which is attached to deposition of Enos Ayres, marked "Exhibit J." Also another deed of release, dated January 29, 1875, made by Enos Ayres, trustee, and Oswell
211 A. Bogue, and certificate of record thereof endorsed thereon, which is attached to said Ayres' deposition as "Exhibit K."

Henry J. Traver, complainant as aforesaid, read in evidence the depositions of Henry J. Traver, Michael Traver, Enos Ayres, Josiah S. Wolf, Lawrence A. Carton and Henry J. Traver, and Michael Traver recalled, taken before Henry Waller, master in chancery of the circuit court of Cook county, Illinois, by agreement of parties, and "Exhibits A, B, C, D, M, F, G, H, J, and K," thereto attached. Also the depositions of Henry Peachey and John Dickson, on file in said cause, and Exhibit "Z," attached to the deposition of said Peachey.

Said Henry J. Traver further read in evidence the deposition of Henry L. Hammond, recalled, and "Exhibit O," being a statement of account, and the letters numbered from 1 to 34 inclusive, thereto attached, taken before Henry Waller, master as aforesaid.

Said Richardson further read in evidence depositions of James C. Hyde, Oswell A. Bogue, Henry L. Hammond, J. L. Lee, Michael W. Manning, Enos Ayres, recalled, Oswell A. Bogue, recalled, and of himself (Charles A. Richardson), all taken before said Henry Waller, and Exhibit "L" to the deposition of said Hyde, and said "Exhibits C, D, F, G, and H," to the deposition of Henry J. Traver.

212 Said Richardson further read in evidence by consent of all parties Exhibits G, L, L, showing releases of property in block two (2), made by said Hammond, trustee, and a list of warranty deeds made by Henry J. and Michael Traver, of lots in Traver's subdivision, the dates of said deeds and the consideration thereof.

The following facts appeared in evidence on the part of Samuel

A. Sawyer, and by agreement of the parties this statement is to be taken for all purposes in this suit as a part of the record, instead of the evidence at large of said facts. Samuel A. Sawyer recovered a judgment against Thomas D. Snyder, J. Lewis Lee, and James C. Hyde, in the circuit court of Cook county, Illinois, January 15, 1875, for $3,071\frac{10}{100}$ damages, besides costs, on which judgment execution issued August 15, 1875, which was levied by the sheriff on lots one to nineteen, both inclusive, in block two of Traver's subdivision, as the property of James C. Hyde, on August 19, 1875. The sheriff duly sold the land levied on under the execution September 13, 1875, and it was purchased at said sale by said Samuel A. Sawyer for $3,259\frac{30}{100}$, being the amount of the judgment, interest, and costs, and the execution was returned satisfied by the sale. A sheriff deed was duly executed, dated December 18, 1876, conveying said land to said Sawyer in pursance of said sale, and was recorded
213 in the recorder's office of Cook county December 23, 1876.

It further appeared that there was due to Sawyer from said Sdyder, Lee, and Hyde said sum of $3,071\frac{10}{100}$ at the time the judgment was entered; that said Sawyer, at the time said judgment was recovered, had no notice or knowledge of any agreement, or pretended agreement, between Henry and Michael Traver, or between them or either of them and James C. Hyde, respecting the obligation of Michael Traver or Hyde to take care of or pay off what is known as the Dickson incumbrance on Traver's subdivision, or to save and clear block 1 of said subdivision from said incumbrance, and had no such knowledge or notice during the year 1875.

The following facts were stipulated by and between Charles A. Richardson and John Borden, William Borden, Peter K. Dederick, Philip W. Dederick, and Aaron Dederick May 28, 1878: That the several deeds mentioned below were made and recorded as stated; that said Bordens and Thomas D. Snyder were merely trustees as stated; that the notes secured by the trust deeds, executed respectively by Mary Ann Pearson and husband to Thomas D. Snyder, trustee, and by James C. Hyde to John and William Borden as trustees, are now held by said Dedericks respectively, or one of them, and were taken before maturity, & before the commencement of this suit,
214 in usual course of business, in good faith, for value and without notice of the several matters involved in this litigation, except that they had notice by the record of all deeds and mortgages recorded in the recorder's office of Cook county, Illinois. The deeds mentioned and referred to are: 1. The deed of release shown as Exhibit K, attached to the deposition of Enos Ayres; 2. The two deeds shown as Exhibits D and H, attached to deposition of Henry Traver; 3. A warranty deed dated November 4, 1873, and recorded November 12, 1873, executed by James C. Hyde to Mary Ann Pearson, conveying lots 33 to 36, inclusive, in block 2 of Traver's subdivision, for the consideration of $5,500; 4. A trust deed dated November 4, 1873, and recorded November 11, 1874, executed by Mary Ann Pearson and husband to Thomas D. Snyder, as trustee, conveying said lots 33 to 36, inclusive, in block 2, to secure the payment of a note for $1,500.00; 5. A trust deed dated November 2,

1874, and recorded November 27, 1874, executed by James C. Hyde to John and William Borden as trustees, conveying lots 30, 31, and 32, in said block 2, to secure the payment of a note for $2,000.00; 6. A trustee's deed dated May 15, 1877, and recorded May 16, 1877, from John and William Borden, as trustees, to Aaron M. Dederick, conveying said lots 30, 31, and 32 in said block
215 2 for consideration of $2,000.00, in pursuance of trustees' sale under the trust deed last above mentioned; 7. The deed of release shown as Exhibit J, attached to deposition of Ayres; 8. The two deeds shown as Exhibits C and G, attached to deposition of Henry Traver; 9. The trust deed executed by James C. Hyde to Henry L. Hammond to secure the payment of $6,000.00, dated December 28, 1872, in evidence on the part of Charles A. Richardson; 10. A deed of release executed by Henry L. Hammond to James C. Hyde, dated March 9, 1875, and recorded March 10, 1875, releasing lots 30 to 36, inclusive, in said block 2 from the trust deed last mentioned.

A stipulation by and between Henry J. Traver and John and William Borden, Freer, and Peter K. Dederick was filed May 28, 1878, whereby said Traver agreed that he would not ask for any decree against lots 30 to 36, inclusive, in block 2 of Traver's subdivision, or against said Bordens, Freer, Dederick, or either of them, without giving notice in time for them to take proofs before final hearing.

Agreed to by counsel. THOMAS DRUMMOND.

216 United States Circuit Court for the Northern District of Illinois.

HENRY J. TRAVER, Complainant,

vs.

MICHAEL TRAVER, JAMES C. HYDE, HENRY L. HAMMOND, OSWELL A. BOGUE, ENOS AYRES, MARY ANN PEARSON, FRANK J. SMITH, ALVIN HULBERT, JOHN BORDEN, WILLIAM BORDEN, FRANK J. WEIDINGER, N. P. GOSS, MARIA SHAW, L. C. P. FREER, CAROLINE E. JONES, MARY E. BRUCE, and GWYNN GARNETT, Defendants.

and

CHARLES A. RICHARDSON, Complainant,

vs.

HENRY J. TRAVER, CLARISSA A. TRAVER, MICHAEL TRAVER, MARY J. TRAVER, ENOS AYRES, HENRY L. HAMMOND, L. C. PAINE FREER, ALVIN HULBERT, GWYNN GARNETT, JOHN BORDEN, WILLIAM BORDEN, MICHAEL WEIDINGER, NATHANIEL S. GOSS, JAMES C. HYDE, MARY A. PEARSON, CAROLINE E. JONES, MARY E. BRUCE, OSWELL A. BOGUE, HUGH A. WHITE, JOHN BALDWIN, JR., LOCKHART R. CARSWELL, and FREDERICK A. WEAGE, and SAMUEL A. SAWER, Defendants.

Depositions of witnesses produced, sworn, and examined, on the part of complainant and defendants in the above-entitled consolidated cause, taken before me, Henry Waller, one of the masters in chancery of the circuit court of Cook county, at my office in Chi-

cago, on the 19th day of February, 1878, pursuant to a stipulation and notice hereto attached, compl't Traver appearing by
217 Alex'r McCoy, Esq., compl't Richardson by F. C. Ingalls, and defendants by F. C. Ingalls, F. H. Smith, H. S. Monroe & J. E. Monroe, Esq'rs, their solicitors.

HENRY J. TRAVER, a witness produced, sworn, and examined, on the part of the complainant, deposes and says:

1. State your age, residence, and occupation?

Ans. My age, nearly 51 years; reside in Du Page county, Illinois, and am a farmer at present.

2. State whether or not you are the complainant in the suit of Henry J. Traver *vs.* Michael Traver *et al.* or not?

Ans. Yes, sir.

3. Please state where you resided in the year 1870?

Ans. State of Ohio, Ashland county, at the county seat.

4. State whether or not you purchased in connection with Michael Traver any property in the latter part of the year 1870 lying in the county of Cook & State of Illinois west of the city of Chicago; and, if so, state the location and description of said property as near as you can, and from whom it was purchased?

Ans. I did; the purchase was made from a man by the name of John Dickson, of the city of Cincinnati, State of Ohio; this property lies in the town of Lacondale; I think in section 23, town. 39, N., R. 13; there were 15 acres and some hundredths of an acre; the exact fraction I cannot state.

6. Do you know what you paid for that property; if so, state.

Ans. I think somewhere about $4,000 over and above the notes; there were 4 notes at $5,373, and some odd cents, each payable in 2, 3, 4, & 5 years from date, bearing 8 per cent., payable semi-annually; I think it was 8 per cent., tho' I may be mistaken.

6. Please state the fact whether John Dickson made a deed for said land to you & Michael Traver; if so, state the date as near as you can?

218 Ans. He did; and it was dated 18th Dec'r, 1870.

7. I'll ask you whether there was any security given to John Dickson upon said land to secure said 4 notes; if so, state the kind of security and how it was given.

Ans. Yes, sir; it was a trust deed to Enos Ayres, as trustee, bearing even date with said deed on the property above described and recorded May 19, 1871.

8. You may state what you and Michael Traver did with said property after you obtained the deed for it.

Ans. We had it platted and subdivided into lots and blocks, and I now hold in my hand the original plat which was recorded May 6, 1872, marked Exhibit A, and made a part of my deposition.

9. State whether you made any division of said property with Michael Traver; if so, state terms of said division, when it was made, and the full particulars relating to the same, as fully as you can.

(Question objected to by defendants as incompetent.)

Ans. I did; in the year 1872, I think about the 1st of Sept'r, we made a division; I was to have eight lots in block 3, commencing with lot 21, running to 28, inclusive; also the entire block No. 1; my brother Michael was to pay the note to Dickson—all the notes—as they became due; he was to have the whole of the balance of the subdivision and some outside property; we had sold some of the lots by contract, and all the proceeds of said sale were turned over to him; he was to pay all the incumbrances upon the said subdivision and I was to have the lots and block assigned to me clear of all incumbrances; the lots that we had sold were all in block 3; my brother had sold them, and is better acquainted with the particular lots than I am; they may not all have been in block 3.

(Answer objected to by Richardson, defendant, as incompetent and improper.)

219 10. State whether there were any deeds or writings made in pursuance of this division by you to your brother or by your brother & wife to you.

Ans. There were deeds passed between us; he quit-claimed to me the eight lots in block 3 and block 1; then I made deeds to him and Mr. Hyde, as he requested, for all the balance of said subdivision.

11. State about the time that these deeds were made by yourself and brother?

Ans. He quit-claimed to me, I think, in 1872, and the deeds made to him were made somewhere on from that time to the following spring; I cannot state exactly when they were made.

12. Do you know James C. Hyde and Oswell A. Bogue? And if you do, state when you first became acquainted with them.

Ans. I know Mr. Hyde and have known him for the last 6 or 8 years; Mr. Bogue I never saw but 2 or 3 times; the first time I ever saw him was about the last day of March or first of April, 1875.

13. Please state when you first came to this State to reside.

Ans. I came here in 1872 to reside and went to Du Page county and have resided there ever since.

14. Has Michael Traver, or any one for him, or any other person settled those notes given by you and him to Dickson, in pursuance of your contract with him, and cleared said block 1 and the eight lots in block 3 from said deed of trust to Enos Ayres?

Ans. No, sir; they havn't.

15. Do you know the condition that block 1 in said subdivision is in relative to said deed of trust, and on what property said deed of trust was a lien at the time of the filing of the bill by you?

220 Ans. I know from the records that the release of block 3 and block 2 has thrown the amount due under the deed of trust all upon block 1; and such was the situation at the time of the filing of the bill.

16. When did you first find out the fact that block 1 was subject to the balance due upon said deed of trust, as stated above by you?

Ans. About the 1st day of April, 1875.

17. When you discovered that fact what did you do?

Ans. I came into this city and took counsel at once, and on the same day I took counsel I called on Mr. Ayres the first time I had ever seen him.

18. Did you have any conversation with him relative to the matter? if so, state what it was.

(Objected to by counsel for Mr. Richardson & Mr. Pearson, and also for Mr. Sawyer.)

Ans. I introduced myself to Mr. Ayres, as I had never seen him, and he, probably, had never seen me. I told him that I had learned that he had released block 2 in Traver's subdivision at Lawndale. He said he hadn't. I said, Mr. Ayres, the records so show. Well, he said, I have no recollection of releasing block 2, was his second reply. He seemed to be a thinking, and he pulled out a drawer of his desk, and the paper he got was a plat of this subdivision, and across block 2 he had written with a pencil, which read something like this: "This block released, but no notes cancelled." Mr. Ayres, I presume, had forgotten, and this showed he had released it. The first remark after he saw that was: "God damn, go for them." He offered to give me a line of introduction to his lawyer to consult as to what was best to do. During this conversation he told me that Mr. Bogue and Mr. Hyde had been to see him several times—I think he said three times—about releasing
221 block 2, in which they had urged him to release it. Finally they came and by representing to him that Mr. Bogue was the owner of all the notes secured, and was willing that all should rest upon block 1, he thereupon released block 2. He also said that Mr. Hyde claimed to be the owner of the property, and as Mr. Bogue claimed to be the owner of the notes, and they both consented to the release, and urged him, he had consented to execute the release on block 2, and he had done so.

(Answer objected to by counsel of said defendants named in objection to question.)

19. Do you recollect whether Mr. Ayres stated at that time anything about any other person joining with him in the release of block 2; if so, state what he said about that?

(Objected to by same.)

Ans. My recollection is that he got Mr. Bogue to join him in that release.

(It is agreed between counsel that all objections to questions and answers may be considered as if made and entered to each separately as to matters of substance & competency.)

20. You have stated in your answer to the 18th interrogatory that Mr. Ayres pulled out of a drawer a plat of Traver's subdivision, and on the face of block 2 there appeared to be a writing by him; please look at the paper now handed to you, and state whether it

is the paper he took out of the drawer, and if you say it is, please attach it to your deposition, marked "Exhibit B."

Ans. I should say it is, and I now attach it to my deposition.

21. State what you then did; whether you went to see any other persons; and, if so, state who, and what conversation took place between you and them.

Ans. I went to see Mr. Hyde; found him absent from his
222 office when I went in; while waiting for Hyde I got into conversation with Mr. Bogue, and told him that I had learned that Mr. Hyde and him had got a release on block 2 of the Traver's subdivision at Lawndale; he didn't seem disposed to talk much; I told him I was dissatisfied with the arrangement; that if the matter wasn't fixed up, I should commence suit; I told him it was throwing the burden of the security upon my block; he said he supposed that the entire subdivision belonged to Mr. Hyde; he had so understood it; I told him if he had examined an abstract he could have seen that he didn't; my brother Michael was with me at the time, and he was somewhat in a hurry to do some other business, and I didn't wait longer for Mr. Hyde, and told him I would call again; we got up and started to go out; Mr. Bogue got up also and started towards the door, and he made the remark to me that you hadn't better commence suit; I will see that those two notes are taken up soon and delivered over to you; he then turned to my brother, and says he, Mike, you and I will manage this thing; we know Hyde better than your brother—meaning me; we left at that time, and I told him I would call again; sometime after, on the same day, I went back to the office; Mr. Hyde came in soon after; he set down to his desk near by where I was setting; I asked him how he was getting along with the payments on the Lawndale property; he said, very well, I have got Dickson paid off; I asked him where the notes were; he said they were here in the office, where I can control them; I told him that I had learned that he had got block 2 released; he said, yes; he had; that he had borrowed
$10,000 from Bogue, for which he gave his notes, and had
223 turned over these two last notes to Dickson as collateral; I told him the understanding between me and my brother Michael was that those notes were to be paid as fast as they became due; he said to that, that such was the understanding he had with Michael, my brother. I told him that was just why I complained, that he hadn't done so. From that I told him I had seen in one of the daily papers quite a sale, whereby he had received $5,500 in money, some lots supposed to be in this block 2. I asked him what he did with the money; he said he took it to pay off a mortgage that he had given on block 2. I asked him then, in conclusion, if he wouldn't deliver up to me those two notes. In reply, he said he couldn't. That ended the conversation with Mr. Hyde.

22. State whether or not you had a previous conversation with Mr. Hyde relative to his contract with Michael Traver; if so, state what he said on that subject; state particularly.

Ans. I had, on the 2d day of July, 1873. I went to Mr. Hyde's office to arrange about the taxes, and at that time he stated to me

that he had taken the contract from my brother Michael to pay off the debt on the Lawndale property to Dickson. He went on to tell me then something about how hard a man Dickson was: that he had been to Cincinnati, my recollection is, twice, before he accomplished his office. He said that he was to pay off those notes as fast as they became due; but he had done better; he had paid off two already, and he should pay the other two within 6 months; then I could go on and dispose of mine, if I wished to. That was about all that was said in reference to this matter.

224 23. You may state whether Hyde told you in that conversation, or any subsequent one, what he got from Michael.

Ans. No, sir; he didn't.

24. Did he state what he was obligated to do for Michael when he took the contract from Michael, at any time to you?

Ans. He stated in this conversation that he was to clear the property of incumbrance, and take up the balance of the notes—two notes—remaining unpaid; and then I could go on and sell if I chose to.

25. In any conversation you had with Bogue, did he state anything about who was the owner of those two unpaid Dickson notes?

Ans. He did not, directly; but from the promise he made, that he would see the two notes delivered up soon, I supposed he was the owner of them.

Cross-examined by Mr. MONROE on the part of ENOS AYRES:

X 1. In your conference with Mr. Ayres, was he not entirely willing to state all he knew about the matter?

Ans. From anything I could discover, I didn't see but what he was.

X 2. Did he not, before using the emphatic language referred to, learn from you the facts, as you claimed them, that this release operated against you; that Hyde and Bogue had perpetrated a fraud on you, and that instead of clearing your part of the property, as agreed, they had, in fact, so acted as to place all the incumbrance upon it?

Ans. Yes, sir; he had learned these facts from me before he used the language referred to.

By Mr. INGALLS on behalf of Mr. RICHARDSON:

X 3. Does the deed from John Dickson and wife to yourself and Michael Traver, dated on the 19th day of December, 1870,

225 express the true amount of the consideration given to Dickson for the land you and your brother purchased of him?

Ans. I do not know, sir.

X 4. Look at the deed now shown you, and then state, if you can, what the fact is?

Ans. My opinion is that it does not.

X 5. I want you to state what you know about it, from your knowledge or recollection.

Ans. From what knowledge I have, and remembrance, it was something like $4,000 paid more than the deed shows.

X 6. What does the deed show was the consideration?

Ans. $23,883.

X 7. How came that sum to be inserted in the deed?

Ans. I cannot tell; my brother did the business, and he can give a more definite answer.

X 8. What was the $4,000 you spoke of paid in, and who paid it?

Ans. My recollection is that there was some $2,300 of tax that was paid and the balance in money; my brother Michael paid it.

X 9. What is your means of knowledge of his having paid it?

Ans. From recollection.

X 10. In what way did you learn the fact of his having paid it?

Ans. In writing back and forth; I lived in Ohio at the time.

X 11. From whom did you learn it?

Ans. From my brother Michael.

X 12. Your knowledge of the fact then is, that you learned from your brother Michael that he had paid such amounts?

Ans. That's my recollection.

X 13. In your answer to the 9th interrogatory, you state in regard to an agreement between yourself and your brother Michael respecting a division of the land between you, and the contract
226 in regard to the land; now I want you state whether that agreement and contract you testified about was in writing or not?

Ans. It was not.

X 14. Now I understand, that in pursuance of some oral agreement made between you and your brother Michael, he made a quit-claim to you of some 8 lots in block 3, and also of block 1, and that you made a quit claim to him of 12 lots in block 3, and 18 lots in block 2.

Ans. That is correct, except that I do not recollect whether the deed or deeds made by me were quit-claim or warranty.

Adjourned to 11 A. M. to-morrow, 20 Feb.

FEB. 20, 1878—11 a. m.

Parties met according to adjournment, cross-examination resumed by Mr. INGALLS.

X 15. Look at this deed now shown you, dated Dec. 20, 1872, between yourself and wife and Michael Traver, and state whether this is the deed made by you in pursuance of your agreement with said Michael about a division of said land?

Ans. That is my signature, I should say, so far as this deed goes. There were other considerations besides this containing deeds for the balance of the subdivision, excepting that part that was conveyed to me, together with contracts of sales, moneys, & notes, to the amount of several thousand dollars—10 or $12,000, I should think, in contracts & moneys & notes, exclusive of this deed. I cannot state how many thousand dollars there were. I make this deed, marked "Exhibit C," a part of this deposition.

X 16. Do you mean that you received the value of $10,000, or that Michael received it from you?

Ans. Michael received it from me.

227 X 17. Then Michael received from you this deed, just referred to, and the value of some $10,000, besides that, in exchange for his conveyance to you of block 1 and the 8 lots in block 3.

Ans. He received that for the fulfillment of the payment of the 4 notes to Dickson, and to clear from all encumbrances the property conveyed to me.

(Mary Ann Pearson and Saml. A. Sawyer, by their counsel, object to all evidence from the witness of an oral agreement between himself and Michael Traver inconsistent with the terms of the deed referred to by the witness and marked "Exhibit C.")

X 18. Did you make any other deed to Michael Traver besides this deed in pursuance of your agreement to divide the property?

Ans. I don't know.

X 19. I understand that this deed, "Exhibit C," was made in pursuance of, and in order to carry out in part, the same agreement under which Michael convey to you block 1 and 8 lots in block 3.

Ans. It was so made, as far as it went.

X 20. Were the notes & contracts you referred to as having been turned over to Michael by you, securities which had been received for the sale of property by you and Michael in this subdivision?

Ans. Yes, sir.

X 21. You spoke of some money having been paid; how much money was paid by you to Michael?

Ans. I could not state the amount of money.

X 22. Had not you and Michael Traver, previous to the time of your alleged agreement with him, made warranty deeds of all the lots in block 3, except the 8 lots described in the deed from Michael to you, to various purchasers, containing the usual covenants of warranty against all encumbrancers?

Ans. I don't know, because I signed any papers my brother
228 sent me to aid him in carrying out his contract with me—having full confidence that he was acting fairly and honestly with me.

X 23. How was it understood that Michael was to raise the means to clear off the encumbrances you referred to?

Ans. With the notes, moneys, land, and contracts turned over to him, together with his own resources.

X 24. Were his resources large or small, outside of this property?

Ans. At that time, I suppose he was the owner of considerable property.

X 25. What was the date of your alleged agreement with Michael?

Ans. I can't give you that exactly, it was some time in the summer of 1872.

X 26. Did you know of the release made by Dickson and Ayres of block 3, at the time it was made?

Ans. No, sir.

X 27. Upon whom did you depend to act in regard to obtaining

releases, as they might be requisite, in order to enable Michael to carry out his agreement with you?

Ans. There was no understanding, that I remember of, in regard to releases. I didn't depend on any one.

X 28. When did you ascertain that the release had been made of block 3?

Ans. I do not know whether I knew it previous to Mr. Hyde's telling me in July, 1873, or not.

X 29. Did you then, or do you now, complain that any wrong was done you by the release of block 3?

Ans. I didn't; the reason was that Mr. Hyde told me that two of the notes, payable to Dickson, had been paid and cancelled, and I do not now complain.

X 30. From whom did you learn of the release of the lots in block 2?

Ans. Mr. Vallette, of Wheaton.

X 31. Did you know at the time you ascertained said last mentioned release had been made, and do you now know,-
229 how many lots remained in said block 2, which had not been conveyed by yourself & Michael by warranty deeds to various purchasers?

Ans. I do not know, as I haven't made personal examination to ascertain, and I didn't know it when I heard of said release.

Cross-examination on behalf of SAM'L A. SAWYER:

X 32. Mr. Traver, I now show you a certified copy of a warranty deed, dated the second of Sept. 1872, made by yourself and wife and Michael Traver and wife to Charles M. Earl, and conveying lots 10 to 39, both inclusive, in block 2 of Traver's subdivision, and recorded in the recorder's office of Cook county, Sept'r 12, 1872. Please to state if you recollect executing said deed.

Ans. I don't remember any of the parties that deeds were made to; as I stated before, I relied upon my brother to do the business, and signed such papers as he sent me, and kept no record of what was done.

(The paper just referred to is marked "Exhibit D," and offered in evidence and produced as a part of this deposition, and hereto attached.)

X 33. I now show you a certified copy of a deed dated the 20th of Dec'r, 1872, made by yourself and wife to Michael Traver, conveying certain lots in blocks 2 and 3 in Traver's subdivision, and recorded Jan'y 7th, 1873. Please to state if you recollect executing such a deed.

Ans. I don't exactly recollect executing that deed, but I have no doubt I did.

(This deed is offered in evidence, marked Exhibit E, and attached to this deposition.)

The deed marked "Exhibit F," from Dickson to Henry J. Traver and Michael Traver was produced by Mr. McCoy, sol'r for

Traver, and offered as evidence in this case, and is hereto attached.

230 Re examination by ALEX'R MCCOY, Esq.:

1. You stated in your cross-examination that you turned over some money to Michael. Please state what money; whether it was your individual money or not.

Ans. The money turned over was money received from sales by contract for some of this property; the amount I don't remember.

2. State what was done with the notes and proceeds of sales of the lots in block 2 to Earl?

Ans. That was a matter that my brother did, and I cannot tell; they were all left with him; they all went to him.

3. Now, what was the agreement in relation to the proceeds of that sale with you?

(Objected to additionally, for the reason that it re-opens the compl'ts case.)

What was he to do with them?

Ans. He was to apply the proceeds of that sale and of all other sales to the liquidation of the encumbrance on the property due Dickson.

HENRY J. TRAVER.

Also the deposition of MICHAEL TRAVER, a witness produced, sworn, and examined on the part of complainant Traver:

1. State your age, residence, and occupation.

Ans. My age is 43 years; residence, Oak Park, Cook county, Illinois; occupation, a real estate dealer.

2. Will you please state what you know about the purchase of a piece of land by yourself and brother from John Dickson, of Cincinnati, which land lies near Lawndale, in Cook county; state the description of the land as near as you can, when you bought it, what you gave for it, and what was done with it?

Ans. We bought fifteen acres and $\frac{92}{100}$ths of John Dickson, Cincinnati, Ohio, in the winter—some time in December, 1870; this is the land mentioned in the bill; we gave between 23 and

231 $24,000 for it; that's my best recollection; a cash payment was made between $2,300 and $3,500; there were 4 notes of $5,373 and some odd cents each, given for the balance of the purchase money; these notes were secured by a deed of trust on this same property, and were given to John Dickson; Enos Ayres was the trustee; the notes were payable in 2, 3, 4 and 5 years respectively, with interest at 8 per cent., payable semi annually; we subdivided the land, in the spring of 1872, into lots and blocks; there were three blocks in the subdivision, and numbered 1, 2, and 3; my brother's name is Henry J. Traver.

3. State whether your brother and you made any division of said land; if so, state what division you made of the same, and the contract under which the same was made; state fully.

It was stipulated between counsel that all objections of substance made by defendants to the preceding deposition of Henry J. Traver shall be applicable to this deposition, it being understood that proof of oral contracts between the Travers is specially objected to in both depositions.

Ans. We did; we made an agreement in the summer of 1872, or the beginning of the fall; we passed our papers in September, 1872. I then deeded, by quit-claim, lots 21 to 28, both inclusive, in block 3, and all of block 1 in said subdivision to Henry J. Traver. He deeded to me, about the 20th of December, 1872, all the unsold portions of blocks 3 and 2, and turned over to me all the money, notes, and contracts which we had received from sales made in blocks 2 and 3. The agreement between my brother and me in the division of this property was that I was to pay off the 4 notes given by us to Dickson and procure a release upon the whole subdivision.

4. You may now state what you did to carry out your part of the agreement.

Ans. I found, in December, 1872, that I was unable to
232 raise the money to pay the note about coming due to Dickson. I then made a certain agreement with James C. Hyde. I went to see Mr. Hyde and related to him the circumstances of the one note becoming due soon to Dickson, to see if he could assist me to raise the money. Then Mr. Hyde and me made an agreement that if I would turn in to him the notes, and a contract which had been given for sales of some of the lots in said subdivision and deed to him the remaining unsold lots in blocks 2 & 3 he would pay off those 4 notes given by my brother and me to Dickson, and would obtain a release of the entire subdivision. I accordingly turned over to Hyde the said notes and contract, and deeded to him all the said lots remaining unsold, lots that belonged to me.

5. Please state about the amount of the notes and contract that you turned over to him?

Ans. There were $9,000 of notes secured by trust deed on 30 lots in block 2, given by Earl; and there ware in the neighborhood of 5 or $6,000 of notes & contracts given by varsous parties and secured by deed of trust on lots in block 3.

6. State when you made a deed to James C. Hyde of the lots in said subdivision in your name remaining unsold, and the number of lots as near as you can.

Ans. I think it was in Dec'r, 1872, on the 28th day. I hold in my hand a certified copy of said deed, which I now attach to my deposition, marked "Exhibit G," which will show the number of the lots I conveyed to said Hyde.

7. Please state what James C. Hyde agreed with you to do, in consideration of the conveyance of the lots described in Exhibit "G." and for the delivery of the notes and contracts and deeds of trust you turned over to him.

(The same special abjections are made by defendants to all evi-
dence as to oral contracts between Hyde and the witnes, as
233 were made as to oral contracts between the Travers.)

Ans. To pay off the notes to Dickson and deliver up a release hewas to procure from Ayres, as trustee.

8. State whether or not the contract you made with James C. Hyde, in reference to procuring a release from the Dickson trust deed to the subdivision, and particularly to block 1, was the same in substance that you had agreed with your brother, Henry J.

(Form of this question objected to.)

Ans. It was.

(Objected to, formally.)

9. It appears from the evidence that you and your brother, Henry J., and wives, made a deed, Sept. 2d, 1872, to one Earl for about 30 lots in block 2; please give a history of that transaction, and state whether or not James C. Hyde obtained the title to those 30 lots for the purposes stated in your agreement with him.

(Mr. Monroe objected to any evidence of any unwritten contract or agreement inconsistent with the terms of the deed by the Travers to Charles M. Earl, and by Michael Travers & wife to James C. Hyde.)

Ans. I requested my brother to join in a deed with me for the 30 lots deeded to Earl for the purpose of getting the $9,000 notes and trust deed back from Earl that I might be able to negotiate them to raise money to pay off the indebtedness upon the property to Dickson. This negotiation failed, and at the request of Mr. Hyde I procured a deed from Mr. Earl to Mr. Hyde for those 30 lots in block 2, and a release of the deed of trust from Earl to John C. Polly was procured. A warranty deed from Earl & wife was made to James C. Hyde Dec. 28, 1872, for said 30 lots, recorded Jan'y 7, 1873; the consideration expressed in it was $16,000. The only consideration which in fact passed from Hyde to Earl was the return to Earl of his $9,000 notes.

10. State whether or not Mr. Hyde has ever taken up those
234 notes to Dickson and procured a release of the subdivision from Ayres.

Ans. Not to my knowledge.

11. Do you know anything about a release from Enos Ayres, of block 2 in said subdivision, dated on the 29th day of January, 1875, and signed by Oswell A. Bogue, legal holder of notes?

Ans. Yes, sir; my brother first told me of such a release being procured; I never knew of the release, before I was informed by him, of block 2.

12. State whether you went with your brother to see Mr. Ayres about this release?

Ans. No, sir; I did not go.

13. Have you had any conversation with Oswell A. Bogue, about this release? If so, state when you had such conversation and where, and what it was.

Ans. Yes, sir; I had; I went with my brother Henry to see Mr. Hyde at Bogue's office—they both officed together—Mr. Hyde was

not in; Mr. Bogue was in the office at the time. My brother made inquiry for Mr. Hyde, or I did, I don't recollect which asked for him; my brother then had a talk with Mr. Bogue in regard to the release of block 2, obtained from Mr. Ayres, as he had noticed that his name appeared in the release. Mr. Bogue said that he assisted Mr. Hyde in obtaining a release of block 2. My brother asked him if the notes were paid on the Lawndale property. Mr. Bogue said that he was the owner of the balance of the unpaid notes; that he had bought the notes from Mr. Dickson. Hyde & he were partners in business. He said he had advanced part of the money in purchasing the notes; Mr. Hyde hadn't enought to take them up entirely himself; and he was holding them as a collateral to Hyde's note. I think that is about the conversation that passed at that time.

235 14. Did you have any other other conversation with Mr. Bogue? If so, state when and where and the substance of the conversation.

Ans. I did. It was perhaps an hour or two later than that my brother had with him. I went to Mr. Hyde's office, expecting to meet my brother there under an engagement. Mr. Hyde nor my brother were neither there at the time. Mr. Bogue was there. He requested me to keep my brother from making any trouble or filing any bill against Mr. Hyde. He said he understood the matter very well; that he was the holder himself of those two notes unpaid, due Dickson, Mr. Hyde being then with him; that he and me together knowing Mr. Hyde much better than my brother, would see that those notes were paid and taken up, and a release obtained of that property to my brother. Then I asked Mr. Bogue if he was aware that all of block 1 belonged to my brother? He said he was, as Mr. Hyde had frequently told him the agreement that I had with my brother; that he, Hyde, had taken the property & notes to carry out the agreement with my brother so that I could fulfill. That was the conversation I had, alone, with Mr. Bogue.

15. Did you ever have any conversation with James C. Hyde on the subject of that release of block 2; if so, state when and where you had such conversation, and the substance of the conversation?

Ans. Not until after I had learned from my brother that he had obtained such release. My brother and me met Mr. Hyde this day we had the talk with Bogue; it was later in the day. Mr. Hyde came to me and wanted me to keep my brother from making any trouble in regard to the release. He had learned that my brother had found out what kind of release had been given; that he thought in a short time he would be able to procure a release of block

236 1 to my brother; that Mr. Bogue had the notes in the office in his possession; that he could soon have everything arranged to take them up; that Bogue and he were partners, and they understood each other; that if my brother would go on and make any trouble it would injure him in his deals, or something to that effect. I then said to Hyde that if he had told me the fact of the payment of those notes, that I should have told it to my brother; that he then would have thought that I wasn't linked into a fraud

myself. At that time I was a good deal out of patience myself. He says then, don't get worried about it, for we sometimes have to make up some pretty short corners.

16. State whether you had any conversation with Mr. Hyde on the subject of these two unpaid notes, some time prior to the conversation you have just testified about; and, if so, state such conversation.

Ans. Yes, sir. It was about the time the 3rd note became due. That was the winter of 1874 or the early part of 1875. I had frequent conversations with Mr. Hyde in his office, and on the street. The conversation was about the payment of the Dickson notes. There was one note due, or about due. He told me he had paid a part of the note then due. His first talk was that Mr. Bogue was arranging to take up the paper. If he could effect his arrangements with Mr. Bogue, then they would have it in their own hands where he could manage the payment in a short time. Then I had frequent conversations afterwards to the same effect. After Mr. Bogue had procured the notes, Mr. Hyde told me that Mr. Bogue had advanced the money to Mr. Dickson; they had the notes there in their office; that I might tell my brother they would soon have the notes paid off.

Adjourned till 10 a. m. on Saturday, 23d Feb., 1878.

10 a. m. SATURDAY, 23*d Feb.*, 1878.

Parties met in pursuance of adjournment.

237 Direct examination resumed by Mr. McCOY:

17. You may state whether you recollect of a release as to block 3 being given by the trustee Enos Ayres and John Dickson to yourself and your brother, Henry J.; if so, state when said release was made, and whether it was accepted by you and your brother; and, if so, state why it was accepted.

Ans. Yes, sir; I recollect of such a release from looking at the release which I now hold in my hand; it seems to have been given on the 8th day of February, 1873, and this corresponds with my memory. It was accepted by myself and brother, and we accepted it from my belief and knowledge derived from Mr. Hyde, that the two notes first due to Dickson had been paid off and cancelled; they had been shown to me. Mr. Hyde had told to me that he had gotten enough money out of block 3 to pay off those two Dickson notes. Therefore we were satisfied that that block should be released, because the avails from that block paid off half the entire debt. This release released 8 of the lots I had agreed with my brother to have released, and then block 2 was ample security enough to meet the balance of the Dickson notes.

Cross-examination by Mr. INGALLS:

X 1. Look at the deed made by Dickson & wife to yourself & Henry J. Traver, marked Exhibit F; state what is the considera-

tion named in said deed, and whether that is a correct statement of the consideration for the purchase of the land from Dickson.

Ans. The consideration named in the deed is $23,883. I should judge that that was a correct statement of the consideration for the land, altho' I had not in my mind a recollection of the exact figures.

X 2. Of that consideration the sum of $21.494.$\frac{70}{100}$ consisted of the 4 notes made to Dickson, secured by the trust deed to Ayres, did it not?

238 Ans. Yes, sir.

X 3. What did the balance of the consideration consist in?

Ans. There was an assessment for Ogden avenue of $2,300 & some odd dollars is my best recollection. There might have been a small cash payment, but I do not recollect it; it must have been very small, if there was one.

X 4. Was that assessment you speak of paid?

A. Yes, sir.

X 5. What was the amount paid, and whose money paid it?

Ans. Some $2,300 and over; my brother's money and mine paid it; the largest portion was my brother's.

X 6. You say that you made your arrangements with your brother, in the summer or early fall of 1872; what was then the situation of the market for real estate with respect to disposing of this kind of property, and what was your expectation in regard to disposing of the property in block 2 and 3?

Ans. The market was very good, and my expectation was in realizing the money from a Mr. Hathaway, at Rochelle, through his agent, or represented to be his agent, one Samuel Bailey, but I was disappointed; I was in hopes of getting the money from him till near the time when the first note became due.

X 7. Did your brother know of this contemplated arrangement?

Ans. My best recollection is I told him.

X 8. In this arrangement you then contemplated how were you to get the money?

Ans. The intention was to realize the money upon the notes, and pay to Dickson; the notes were those I turned out to Hyde.

X 9. Your intended arrangement contemplated the raising of sufficient money by giving securities on block 2 and 3, made by other parties and yourself, to clear off the whole of the Dickson encumbrance, did it not?

239 Ans. Yes, sir; that was my intention; and if couldn't get the whole to pay Dickson, I should have attempted then to have raised as much as I could to pay to Dickson.

X 10. Didn't you make a considerable effort to realize the money to pay off Dickson, on the said blocks 2 and 3, before you went to see Mr. Hyde?

Ans. Yes, sir; the most of the effort was through Mr. Bailey, and it was to pay off the whole of the Dickson debt.

X 11. It was in contemplation, as I understand, that you were to raise the money by giving securities on blocks 2 & 3 to pay Dickson

off, and leave the holder or holders of the securities which you should give in the position of first incumbrancers on said blocks 2 & 3?

Ans. That was my intention in negotiating the paper.

X 12. You intended to raise the money, and then pay Dickson, and secure releases on the whole subdivision?

Ans. That was the intention.

X 13. Did you, before you went to Hyde, make any application to Dickson for releases on any part of the property?

Ans. I think I did.

X 14. Did you apply to him for releases of blocks 2 & 3; and, if so, what was the result?

Ans. I think I replied to him in regard to releases, but could not say for which block or blocks; I don't recollect, but it might have been for all; Mr. Dickson, I think, referred me to his trustee, Mr. Ayres.

X 15. Were you not seeking to get releases from Dickson so as to enable you to carry out the plan you had in contemplation as referred to by you?

Ans. I was seeking to raise all the money to carry out all my plans and agreements with my brother.

X 16. That you intended to do by means of the plan you spoke of which you had in contemplation, did you not?

240 Ans. Yes, sir.

X 17. Was it not in order to carry out this plan that you sought the releases of Dickson?

Ans. Yes, sir; My recollection is that I wrote to Dickson to know whether he would take all or a portion of the money before it was due.

X 18. When did you first go to see Hyde?

Ans. It was about the time of the maturity of the first Dickson note.

X 19. Hyde was not at that time in the same office with Mr. Bogue, or connected with in any way, as far as you know, was he?

Ans. He did not occupy the same office; he was often in and out to see Snyder and Lee, and Hyde, who was in the office of Snyder and Lee in the Nixson building at that time. I know of no business connection between Hyde and Bogue at that time.

X 20. Had you known Hyde previously, and how long?

Ans. Yes, sir; some few years previously.

X 21. Had you had any transactions with Hyde before that?

Ans. Yes, sir.

X 22. Had you been frequently at the office of Snyder and Lee before that time?

Ans. Yes, sir.

X 23. Who made the sales of those lots that had been sold in block 3 before you made your alleged arrangement with Hyde?

Ans. I made some of them; I can't recollect who the other parties were; I could name some of them who sold some of the lots; Mr. Lee sold one; they acted for me when they sold the lots.

X 24. You received the consideration given for those lots that

were sold; and also attended to the execution of the papers by yourself and brother; did you not?

Ans. Yes, sir.

X 25. It was the same with regard to the sale to Earl of lots in block 2, was it not?

Ans. There was no consideration received from Earl, ex-
241 cept the notes given by Earl upon the property for $9,000; these were received by me.

X 26. Did you not, before you went to see Hyde, endeavor to obtain from Dickson or Ayres, a release of a part of the property; and did you not fail in obtaining it?

Ans. I had made application to Dickson for a release before I saw Hyde on the subject, but cannot recollect whether it was for a part only, or for the whole of the property. I failed to obtain a release, because I didn't get the money.

X 27. Was Dickson willing to receive payment of the whole debt, then?

Ans. My recollection is now, that he was.

X 28. Was he willing to receive payment in part, and release a part of the property?

Ans. I couldn't answer that, because I can't recollect that I applied for a release of a part, tho' I might have done it. If I did, he referred me to Ayres, his agent and trustee.

X 29. What did Ayres say?

Ans. My recollection is, that Ayres said that if Dickson received all the money he would release at the request of Dickson.

X 30. You went to see Hyde about or at the time the first note to Dickson became due, is that so?

Ans. Yes, sir.

X 31. How long were you negotiating with Hyde, before you and he came to an agreement, as you have heretofore detailed?

Ans. I couldn't state the exact time, it wasn't long, perhaps a week or two.

X 32. The first Dickson note fell due in the meantime, did it not?

Ans. It was due, or about due the time we made our agreement.

X 33. Had Mr. Dickson or Mr. Ayres done anything up to the time when you made your agreement with Hyde?

Ans. I think not.

X 34. Was it understood that Mr. Hyde should go to Cincinnati to see Dickson?

242 Ans. No, sir; I think that Mr. Hyde volunteered to go and see Dickson to ascertain from him what he could do with him in making the payment. My recollection is he went before the agreement.

X 35. Did he go by your desire or at your request?

Ans. I think he went to ascertain for himself what could be done with Dickson.

X 36. Had you then proposed to him to take hold of the matter?

Ans. I think I had.

X 37. Mr. Hyde did procure the release from Ayres and Dickson for block 3, did he not?

Ans. Yes, sir.

X 38. Did you then consider that there would be enough of property in block 2 & 3, as the real estate market then appeared, to realize sufficient money, on disposition of the same, to pay off the whole Dickson encumbrance?

Ans. Yes, sir; and more too.

X 39. Was Hyde of the same opinion, and from what you know of Mr. Hyde as a seller of real estate, did you not believe it could be done?

A. Yes, sir.

X 40. Had you known Mr. Bogue previous to the time of these transactions; and, if so, how long?

Ans. Yes, sir.

X 41. You testified in regard to an occasion when you went with your brother to see Mr. Hyde after the time the release was given of block 2; you remember that occasion, do you not?

Ans. Yes, sir.

X 42. Mr. Hyde, you say, was not there, and you and your brother saw Mr. Bogue?

Ans. Yes, sir.

X 43. Did you hear your brother tell Mr. Bogue that the release of block 2 threw the burden of the security upon his block?

Ans. I think I did, after he learnt that there were no notes
243 taken up and cancelled.

X 44. Did you hear Mr. Bogue state to your brother, in answer, that he supposed the entire subdivision belonged to Mr. Hyde; that he had so understood it?

Ans. That's what he told my brother at that time; he told me differently afterwards.

X 45. You stated that you saw Mr. Bogue again—an hour or two afterwards—and he advised you to keep your brother from making any trouble, or filing any bill against Mr. Hyde; did he not say in substance that he thought it would be an injury to all parties to bring a suit?

Ans. I saw Mr. Bogue after, and in a conversation with him then he told me to keep my brother from making any trouble or filing any bill. He said he thought it would be an injury to all parties to bring a suit.

X 46. Didn't you also express that opinion, that you thought it would be an injury to all parties to bring a suit then?

Ans. I did; but gave my reasons that my brother would have to, to protect himself in the hands of thieves.

X 47. Did you not, in fact, advise your brother against commencing any suit?

Ans. I talked to him about it, but he said it would be no use talking; he believed he was being defrauded of his rights, or something to that effect.

X 48. How often had you seen Mr. Bogue during the few weeks before this occasion?

Ans. I couldn't state just how many times.

X 49. Had you seen him quite frequently?

Ans. I wouldn't state exactly. I had seen him perhaps a few times.

X 50. Had you any business transaction with him?

Ans. Not that I know of.

X 51. When was it that you first knew of Mr. Bogue hold-
244 ing an incumbrance upon this property?

Ans. At the time I went to his office on an engagement of my brother; I first knew of the fact from Mr. Hyde, about the time he got the release of block 2.

X 52. I understand you to say that your first knowledge in regard to Mr. Bogue holding an incumbrance on the property was derived from Mr. Hyde, sometime previous to the occasion when you went with your brother to Hyde's office; state as near as you can about how long it was, according to your best recollection.

Ans. From one to three months; I cannot state positively.

X 53. Now, in regard to the time of the interview you have described between your brother and yourself and Mr. Bogue, at his office, how long was that before your brother filed his bill?

Ans. It was a few days. I forget exactly; but it was inside of a week.

X 54. Now, on that day, after what was said between Mr. Bogue and your brother in respect to your brother's interest in the subdivision, did not Mr. Bogue, in the subsequent conversation with you, say, in substance, that he thought that if Hyde was let alone he would be able to accomplish all that you or your brother claimed he ought to?

Ans. He did; with his help—he would help Hyde—as they were partners in business.

X 55. Was not this help, or assistance, which Mr. Bogue spoke of, in reference to making sale or disposition of the property?

Ans. I couldn't tell what Mr. Bogue thought.

X 56. You say Mr. Bogue spoke of his partnership with Hyde, in connection with the matter; was not that partnership one for the purpose of buying and selling real estate on commission?

Ans. I presume it was.

X 57. Did you not express, substantially, the same opinion respecting Mr. Hyde's carrying the matter through, that Mr. Bogue did.

Ans. Yes, sir; from what Mr. Bogue had told me, that he
245 was the owner of the balance of the unpaid notes.

X 58. Was the alleged agreement which you made with Mr. Hyde in regard to the property, and detailed in your direct examination, an oral or written agreement?

Ans. There was no written contract between us.

X 59. Look at this deed now shown you, dated on 28th day of December, 1872, between yourself and wife and James C. Hyde, and state whether this is the deed made by you in pursuance of your said agreement with Hyde.

Ans. Yes, sir; I attach it to my deposition, marked "Exhibit G."

X 60. Look at this deed now shown you, dated 28th Dec'r, 1872, between Charles M. Earl and wife and James C. Hyde, and state whether this deed was also made in pursuance of said agreement?

Ans. That deed was made at the request of Hyde. I turned over to Hyde Earl's notes, then by request of Hyde, who preferred the property to the notes, this deed was made to him by Earl and wife. The notes of Earl were then cancelled and surrendered to him. I attach this deed, marked "Exhibit H," to my deposition.

X 61. I understand, then, that when the matter was closed at request of Mr. Hyde, you got Earl to take back the securities he had given and execute this deed to Mr. Hyde?

Ans. The matter with Hyde was closed by me when I passed Earl's notes to Hyde, with the other notes and contracts on block 3. After that Hyde requested the deed from Earl upon surrender to Earl of his notes.

X 61. Was not this deed from Earl made at the same time the deed was made from you and your wife to Hyde?

Ans. I think not the same day; it may have been dated, though, the same day.

X 62. Which was executed first?

Ans. I think my deed to Hyde was executed first.

X 63. How long before?

246 Ans. Well, I presume only a few days.

X 64. Where was the Earl deed executed?

Ans. My best knowledge is on Adams street, near Paulina.

X 65. You think that was a few days after the other deed was executed?

Ans. Yes, sir.

X 66. While you were negotiating with Hyde in regard to this property at his office, did you say to him in substance that you were about to lose the land, as Dickson would not extend the notes, but would foreclose the trust deed?

Ans. Not to my knowledge. I had good hopes that the arrangement and talk with John C. Polly would result in enabling me to meet the Dickson payments.

X 67. Did you not state that you wanted Hyde to go to Cincinnati and see Dickson, and get him to extend the loan?

Ans. No, sir; that was his own proposition—to see Dickson to see what arrangement he could make if he took the property.

X 68. Did you not state in substance that you could not get Dickson to extend the note or notes; that you thought Hyde could?

Ans. I don't know as I stated that Hyde could get Dickson to extend; I don't recollect of stating that.

MICHAEL TRAVER.

Re-examination by Mr. McCoy:

1. You have stated in your cross-examination that Hyde told you sometime before your brother and you visited Bogue that Bogue held the encumbrance or the Dickson notes; did he inform you at

that time, or did you know, that Ayres and Bogue had signed a release of block 2?

Ans. No, sir; I knew nothing of the release of block 2 until my brother had informed me that block 2 was released.

Q. Mr. Ingalls has asked you whether you did not make these efforts to take up the Dickson notes, and the execution of the
247 deed to Earl for the purposes of carrying out your plan; please state for what purpose you were making these efforts with Dickson, and for what purpose you turned over your contract with your brother to Hyde.

(Objected to by Mr. Ingalls, on the ground that it is reopening the complainant's case.)

Ans. To carry out my agreement with my brother; to procure a release of his block 1 and the 8 lots in block 3.

3. State whether or not you acted in any way for your brother after this contract was made with him relative to his interest in block 1.

Ans. No, sir; I had no business with him except to fulfil my agreement with him, which I have stated.

4. I see in the deed executed by yourself and wife to James C. Hyde, marked "Exhibit G," in your cross-examination, a consideration of $16,000, as if paid by Hyde to you; please state whether Hyde ever paid that sum or any sum for the execution and delivery of this deed.

(Objected to by Mr. Monroe, on behalf of Sawyer & others.)

Ans. No, sir.

5. Now I will ask you what was the consideration of that deed?

(Objected to, as above.)

Ans. With other considerations, he was to pay off the entire four notes of Dickson and procure a release of this whole subdivision.

6. What did the consideration for the lots sold by you and your brother in block 3, before your arrangement with Hyde consist of chiefly, money or notes?

Ans. There were more notes than money; chiefly notes; I turned over all these notes and contracts, except one or two small notes I had disposed to Hyde, but no money.

MICHAEL TRAVER.

Adjourned until 10 a. m., Wednesday, 27 February, 1878.

10 A. M., WEDNESDAY, 27 *February*, 1878.

Parties met according to adjournment.

248 ENOS AYRES, a witness produced, sworn, and examined on the part of the complainants, deposes and says:

1. State your age, residence, and occupation.

Ans. My age is 63 years; residence, Chicago; occupation, real estate dealer and agent.

2. What was your business on or about the 19th Dec'r, 1870?

Ans. Same as above stated.

3. State whether or not you, as a real estate agent in 1870, Dec'r, as agent of John Dickson, of Cincinnati, sold some real estate at Lawndale, Cook county, Illinois, to Henry J. and Michael Traver; and, if so, describe the real estate as near as you can.

Ans. Yes; as the agent of John Dickson I sold the property described in Exhibit F to Henry J. and Michael Traver in Dec'r, 1870.

4. You may state whether there was a large portion of the purchase money coming to Dickson for the property described in said deed unpaid; and, if so, state the amount as near as you can, and how it was secured.

Ans. There was a large amount exceeding $20,000 unpaid, represented by four notes of five thousand three hundred and seventy-three $\frac{68}{100}$ dollars each, payable in 2, 3, 4, & 5 years from date; these notes were secured by a deed of trust on the same property and were signed by Henry J. Traver and Michael Traver.

5. State the date of said trust deed, and who was the trustee?

Ans. The date was the 19th day of Dec'r, 1870, and I was trustee.

6. State whether or not you acted as the agent of John Dickson in relation to the collection of these notes, after the execution of said trust deed.

Ans. After the transaction was closed up the notes and trust deed were sent to Mr. Dickson and held by him, but they were sent back to me; that is, two of them, as they became due, and were paid to me and my partner.

7. How much interest, or what rate of interest, was pay-
249 able on said notes, and when was it payable?

Ans. Eight per cent. interest payable semi-annually.

8. State whether or not the first installments of interest were paid to you as agent of Dickson?

Ans. Yes, sir.

9. You may state, Mr. Ayres, whether there were any of these notes paid to Dickson; and, if so, whether any of the property covered by said deed of trust was released; and if released, state what property first.

Ans. There was; there was one of those notes and some installments of interest paid, and a release made on the 8th day of February, 1873, for block 3, which was a part of the said tract of land purchased by the Travers of Dickson, I hold in my hand the original release, signed by myself as trustee, and John Dickson as the holder of the notes, and I here attach it to my deposition, marked "Exhibit J."

10. Mr. Ayres, please refresh you memory and see whether there were not two of those notes paid about the time that release was given.

Ans. I discover, by reference to my memorandum, that another note was paid on Dec. 19, 1873,—no, I am mistaken—it was due on that day, and was paid Feb. 13, 1873, some months before it was due. This payment was before the said release was recorded. The release was acknowledged and delivered by me on the same day the said last named second note was paid. Blocks 1, 2, & 3 of Traver's

subdivision comprised the whole of the land sold by Dickson to Travers.

11. You may state whether or not the other two notes given by the Travers to Dickson were paid to you, for Dickson as his agent?

Ans. They were not.

12. Was there any other release given by you as trustee in
250 said deed of trust to any portion of said Traver's subdivision; if so, state when said release was given, who signed it, and all the circumstances connected with the giving of said release; state fully.

Ans. There was, on the 29th day of January, 1875,—on or about the 20th day of January, 1875. I was requested by Mr. Jas. C. Hyde and Mr. Oswell A. Bogue to go to the bank of Preston, Kean & Co., to release block 2 of the Traver subdivision; I went with Mr. Hyde and Mr. Bogue to the bank, and requested to see the note, and such papers as had been sent there by Mr. Dickson, or whoever held the notes; and was shown an unpaid note, which was the 3rd note; and, also, there was from Mr. Dickson a quit-claim deed, signed by him, for block 2, and I turned to Mr. Hyde and asked him what he proposed to do, did he propose to pay the note; he said, no, but he proposed to have Mr. Bogue to try and carry the note for him, and that Mr. Bogue, who was there present, would sign the release with me for block 2. To this Mr. Bogue assented; I declined, unless that note was paid, to make a release, and gave as a reason that there was another unpaid note not due, and that I wouldn't release any more of the property, as trustee, unless both of the unpaid notes, the one there and the one becoming due, were in the hands of one and the same party, and he would join me as the holder of said notes in the release. At the time he made this request for the release of block 2, by Mr. Bogue's joining me in the release, Mr. Hyde, in presence of Mr. Bogue, said there would be ample security for the unpaid note not due, in block 1, of which he was the owner. Then the interview ended. On the 29th of January, 1875, Mr. Bogue called at my office with the two notes—
the one due and the one not due—and showed them to
251 me. I am not certain that I looked at the back of those notes; I looked at the face of them and recognized them as the notes of Travers to Dickson, which had been given for the property. He then presented to me a release of block 2; which was not in form, as I had told them a release should be made out and signed at our first interview. Mr. Bogue took the release, had it corrected as I wished it, and soon after returned with it, and he and I went before a notary, and each acknowledged, not only to our names, but to the facts therein contained.

13. State whether Mr. Hyde was present at the time you and Bogue signed the release on the 29th January, 1875.

Ans. He was not.

14. When Mr. Hyde made the remark at the office of Keene, Preston & Co., that he owned block 1 in said subdivision, what did Mr. Bogue say, if anything?

Ans. Nothing in that connection; he stood close to us, and he heard what Mr. Hyde said regarding it.

15. Did Mr. Bogue, at either of those interviews, say who owned the notes? State what he did say on that subject.

Ans. On the 29th of Jan'y, 1875, when the release was given, he stated that he was the owner of the notes, and acknowledged before a notary public to that fact.

16. Look at the paper now handed you, bearing date January 29, 1975, and state whether that is the release signed by yourself & Bogue, which you have just been testifying about; and, if so, add it to your deposition, marked "Exhibit K."

Ans. Yes, sir; that is the release.

17. Look at "Exhibit B," attached to Henry J. Traver's deposition, and state whether you know anything about it; and,
252 if so, state what you know.

Ans. I know it to be a correct plat of the property above mentioned; the writing across the plat, and signed by me, is in my handwriting.

18. Is that memorandum across the plat of block 2 a correct statement, viz., that block two is released, the two notes referred to being unpaid?

Ans. Yes, sir; I think the semi-annual interest on those notes had been paid.

Cross-examined by H. S. MONROE, Esq.:

X 1. Was there any understanding or agreement between yourself and Dickson, prior to your making any of these releases, in relation to releasing any portion of the property covered by said trust deed; if so, please state?

Ans. It was agreed by Mr. Dickson and myself, at the time the trade was made for the property, that no release should be made, except by himself as the holder of the notes and myself as trustee; in the release of block 3 he had joined me.

Re-examined by Mr. McCOY:

1. You may state, Mr. Ayres, whether the first two notes that were paid were cancelled by you or not.

Ans. They were marked "paid" on the face of them.

2. State whether the last two notes were marked "paid" on the face of them when you gave the release of block 2.

Ans. They were not.

3. State whether you were not aware at the time you signed the last release that the Travers and Hyde had conveyed to certain persons portions of said subdivision, subject to said deed of trust.

Ans. I was not.

4. Did you examine the records, or any abstract of the records, to ascertain whether Hyde was the owner of block 1 before
253 you executed the last release?

Ans. I have no recollection of doing so. I wish to state that I had supposed that Hyde had purchased all the property that the Travers had purchased of Dickson.

Cross-examined by Mr. INGALLS:

1. When Mr. Bogue and Mr. Hyde visited you in regard to the release of block 2, was it not Mr. Hyde who did most of the talking, and made the request for the release, and was not Mr. Bogue expressing his assent to your giving such a release?

Ans. At the bank, when the conversation was about releasing block 2, Mr. Hyde did the most of the talking with regard to releasing and joining in the release of block 2. Mr. Bogue assented at that time to sign the release with me and hold that note.

2. I understand the substance of it was that Mr. Hyde appeared, requesting the release, and Mr. Bogue as consenting to such release?

Ans. Yes, sir; and being willing to join in the release.

Re-examined by Mr. McCOY:

1. What was the necessity of Bogue assenting to the release, or what reason did he give for assenting?

(Objected to by counsel for defendants.)

Ans. I understood from Mr. Bogue that he was there at the bank with the object of taking up that note sent there for collection.

And further saith not.

ENOS AYRES.

Adjourned to 10 a. m. Thursday, Feb. 28, 1878.

10 A. M.

Parties met according to adjournment.

JAMES C. HYDE, a witness produced, examined, & sworn on the part of defendant, Richardson, deposes and says:

1. State your age, residence, and occupation.

Ans. My age is 38 years; residence is 359 West Congress street, Chicago; occupation is real estate broker,

2. State whether you are acquainted with Michael Traver
254 and Henry J. Traver; and, if so, how long have you known them?

Ans. I am acquainted with them; I think I became acquainted with them some eight years since.

3. State whether you had dealings with them, or either of them, before you had any transactions in regard to the land in controversy in this suit; and, if so, during what time you had such dealings?

Ans. I had dealings only with Michael Traver; they occurred, I presume, in the years after 1870, during the two or three years previous to this transaction.

4. State whether you had any dealings with Michael Traver in regard to the land now known as Traver's subdivision; if so, state when the transactions began, in what manner they commenced.

Ans. I had dealings with Michael Traver in relation to these lands mentioned; they commenced about the 19th or 20th Dec'r, 1872. Michael Traver came to my office, then in the Nixon building, bringing with him some notes, or a list of notes, which he had from par-

ties, or was to get from parties to whom he had sold some of the lots in block 3 and block 2 of the said subdivision.

5. State what took place at that first interview between yourself and Michael Traver.

(The defendant, Samuel A. Sawyer, objects to any evidence by the witness, Mr. Hyde, contradictory or inconsistent with the terms of the deeds by Henry J. to Michael Traver, and by Henry J. and Michael Traver to Earl, and by Michael Traver to Hyde, and Earl to Hyde.)

Ans. At the first interview Michael stated to me that he and his brother, Henry J., who bought the lands and owned them with him, had agreed between themselves to divide their interest in all the property they held here together, and that in such settlement he, I understood, was to have a certain portion of this property,
255 and Henry a certain portion. But Michael was to have charge of this property, pay such indebtedness as was on it, and after that was paid and settled, Henry was to have block 1 and 7 or 8 lots, I forget how many, in block 3; but Henry not having money, or not wishing to pay anything, had made this arrangement with Michael to relieve his mind of any trouble or worry as to this property, leaving the whole management of it to Michael. They having already sold a number of these lots and given contracts or warranty deeds to several different parties, and having a few of these notes as part purchase-money of the lots sold by them, Michael wished me to see if I could not in some manner negotiate said notes to enable him to pay a note of $5,373.67½ (& interest on three others, due John Dickson, of Cincinnati. I was unable to negotiate these notes. He left the notes, or a list of them, with me that day, I promising to see what I could do in the matter, he promising to call in a day or two to learn what success I had.

6. State what you did next, and when you had your next interview with Michael, and what then took place between you.

Ans. I took the list of these notes, and called on several parties to whom I made application for money, but failed to negotiate them, as they were second liens; of no value in the market until property on which they were secured was released of the prior incumbrance. Michael came again on the 22d of Dec., telling me that he must do something at once, as he had just received notice from the bank that the John Dickson note was here, and must be paid. I told him that I had not succeeded in using the notes to any advantage to him, and doubted his using them with any person until the property on which they were secured was released from the Dickson mortgage; that ended our interview that day.

256 7. You may state what took place afterwards; giving the transactions consecutively, stating the time as nearly as possible, between yourself and Michael Traver?

Ans. He came in to see me again two or three days afterwards, I think it was the 26th Dec., saying that something must be done at once with the property, as he had nothing else to raise the money on to pay the Dickson note, and Henry was very nervous, and giv-

ing him the devil, that was the word he used, and wished to know if some arrangement could be made with me to help him out of this trouble, as he feared the foreclosure of the land under the Dickson trust deed. At first I told him I thought not; finally I told him I would write to Mr. Dickson of Cincinnati, or go to see him, to see on what terms I could get a portion of this land released. I wrote to Cincinnati to Mr. Dickson, telling him I would be down there in a few days to see him in relation to the Traver notes, and what arrangement could be made. Mr. Traver, I think, was present when I wrote the letter to Mr. Dickson; I had a reply from Mr. Dickson, stating what time he would be at home, (contents of the letter objected to by sol'r for complainant), and I replied I should be down to see him; in the meantime Michael and myself had repeated interviews to consider what arrangement we might make, he stating to me if I would take his place and take charge of this property, and in the end have it fixed so Henry could have his portion as they had agreed to, he didn't care a darn for the rest, but I refused to do anything until I had seen Mr. Dickson. I went to Cincinnati shortly after the 1st of January and saw Mr. Dickson. He was loth to do anything in the matter, saying (objected to by Mr. McCoy as to Dickson's declarations) that he had no confidence in the Travers being able to meet their paper; they had paid him but
257 $3,000 on the purchase of the property, and he had ordered Hamilton, C. J. Hamilton, the attorney, of Chicago, to foreclose the property at once; when I left his store that day I was unable to do anything with him at that time, and intended to come back immediately to Chicago, but that same evening I went back to Mr. Dickson's house, his residence, in Cincinnati, and talked the matter over with him, and we made an agreement then, on my part, that if I paid the note and interest then due, and a sum of money which I think was $3,000 besides, and endorsed the notes unpaid, guaranteeing the same, and procure the endorsement also of Snyder & Lee, and take the property then myself, he having nothing to do with the Travers, he would release block 3; and on the payment of another sum of money, I think $4,000, he would release block 2; he would write to his attorney, Hamilton, here, and I might call on him the next day thereafter, and if Hamilton considered it wise and proper he would so do; I came back to Chicago to close with Hamilton, if I concluded to take the land from Mr. Traver; I reported the whole proceeding, I think, the next day to Mr. Michael Traver, and made a proposition to him then that if he and his brother would deed me all the land not already sold in blocks 2 and 3, and surrender me a certain portion of the securities they had taken on some of these lots they had already sold and cause the lots that Mr. Earl had purchased to be deeded to me, and giving me the whole charge of the whole subdivision, I would carry out the contracts which Henry J. and Michael had already made, and I would pay the note then due to Dickson, and I should have the right to have such releases from Mr. Dickson's trust deed, as he—that is, Dickson—and I could agree on; Michael consented to this arrangement, and on my request submitted the thing to

258 Henry, who came personally to my office in the Nixon building; we talked the matter over—that is, Henry, Michael, Mr. Lee, and myself—as to the nature of the bargain, which was that I should have the management of the property, managing it as I saw proper, and in the end give Mr. Henry Traver the 8 lots in block 3 and block 1; we then consented to carry out this proposition, Mr. Lee then agreeing to endorse the notes for Snyder & Lee, as requested by Mr. Dickson, and Michael and Henry were to get their papers ready to deliver to me; in the meantime I had to arrange matters in relation to the premises to raise the money required to pay Mr. Dickson; in the repeated interviews I had with Mr. Hamilton, Dickson's attorney, I finally agreed with him that I would pay him the first two notes due of $5.373 67½-100 each, and the interest on the other two, and take a release of block 3, and if I called within 30 days with $3,000 more, he was to release all of block 2; I made this known to Michael Traver, and stated to him that I could borrow $10,000 through Hammond and Bogue on block 2, providing it was purchase-money paper, and I must so raise the money or I would not be able to meet the heavy sum; this $10,000 was made in 2 notes, one of $6,000 and one of $4,000, made payable to the order of Michael Traver, and by him endorsed to the order of C. A. Richardson, guardian, and on this paper I realized a sum of money such as would produce, at 10 per cent. interest, the amounts of those two notes at their maturity, out of which I had to pay commissions; with this and other moneys I paid the two notes first due, and the interest due on the other two notes to Mr. Dickson, as agreed with Hamilton; the Traver's had brought their papers and their deeds to me, and their abstracts, in pursuance of their agreements between us.

8. State from whom you obtained the moneys on the $6,000
259 $4,000 notes, made payable to Michael Traver; state whether these notes were secured; and, if so, on what property?

Ans. Hammond & Bogue as agents for C. A. Richardson, guardian. They were secured on block 2, Travers' subdivision, by two deeds of trust dated Dec. 28, 1872, to Henry L. Hammond, trustee, recorded January 7, 1873.

9. When you got this money from Hammond and Bogue as such agents, what was the agreement or understanding, if any, as to these trust deeds being prior encumbrances?

Ans. I told Hammond & Bogue (this statement objected to by Mr. McCoy) that it was the first encumbrance on the property, as I intended to pay the other $3,000 in a few days and release block 2, as agreed with Hamilton.

10. At what time did you procure the release of block 3?

Ans. The 8th day of February, 1873, was its date, and I procured it on the 13th and recorded it on the 14th Feb., 1873.

11. In your agreement, of which you have testified with Michael Traver, what was the understanding in respect to your right to go on and procure releases; can you state it any more particularly than you have done, giving the substance of what was said about it?

Ans. It was distinctly understood before I took the property in

my charge that it was impossible to sell or dispose of the land unless releases were procured, and it was so agreed between Mr. Traver and myself that I should make such arrangements with Mr. Dickson as I could in reference to procuring releases of this property in question, blocks 3 and 2, and finally block 1, which was to go to Mr. Henry Traver, who was not willing to dispose of his, and which was to remain to be the last released.

12. What reasons were stated, if any, at the time, why releases should be procured by you of blocks 2 and 3 before you procured a release of block 1?

260 Ans. The reasons were to give me a chance to so arrange and dispose of blocks 2 and 3 and the securities given me on lots they had sold, as to raise funds to meet the other paper with.

13. What was the fact in regard to the contemplated disposition of the property by you in pursuance of your agreement as to whether it was to be disposed of in bulk or in parcels?

Ans. The fact was it was expected to be disposed of in parcels; it was easier to find customers for lots than for property in bulk.

14. State whether the agreement about which you have testified, with Michael Traver, was in writing or not.

Ans. It was not in writing.

15. State what deeds you received in pursuance of that agreement, if any, of this property.

Ans. I received one deed of Michael Traver and Mary J., his wife, dated Dec. 28, 1872, and one from Charles M. Earl and Mary A., his wife, dated 28 Dec'r, 1872. These deeds were received at the same time.

16. State what was done by you afterwards in respect to the property and the encumbrances held by Dickson and by Mr. Richardson.

Ans. I first deeded the several lots to the respective parties to whom the Travers had sold them, in block 3, which left me five lots in block 3 and all in block 2. The eight lots of Henry Traver in block 3 were not included; they were never conveyed to me. The deeds made by me were all warranty deeds. I then commenced at once to improve the balance of the property to make it more valuable. I also purchased several lots from the grantees whom the Travers had deeded to in block 3. I fenced all the property belonging to myself, made sidewalks, planted trees, carried the city water on the premises, and built four two-story buildings in the spring and summer of 1873, which cost me some $11,000. (Objected to by Mr. McCoy.) I then put the property in market

261 for sale. I sold several lots in block 3, in the fall of 1873. The panic occurring that fall I was unable to sell any more of the property for some time. When the interest became due on the remaining Dickson notes and the Richardson notes, I paid it as it matured. In the winter of 1874, one of the remaining two Dickson notes became due; I saw that I was unable to meet it unless I could force the sale of some of this property; and through Messrs. Abell & Hotchkiss I obtained a customer who would make a trade for 19 lots in block 2, he paying me part cash, and balance Kansas lands.

I made this trade with Mr. Goss, the customer, with Michael Traver's knowledge, and deeded to him the 19 lots in block 2 by warranty deed, (lots 1 to 19 inclusive,) he paying me a sum of about $6,000 in cash, and conveying me some land in Kansas. I also bargained the sale of ten more lots with a building, which would have realized a sum of money had I been able to carry it out. At this time, January 15th, 1875, I paid all the money received of Goss, together with enough other moneys to pay and cancel the two notes of $6,000 and $4,000 of mine to Richardson, and enough on the two Dickson notes to reduce the same to $10,000 after paying up the interest. I then applied to Hammond & Bogue to purchase the Dickson notes, and hold them, so as that the one due should be extended one year, and thus prevent a sale by Dickson under the trust deed, who had declared both due and wished the money. Messrs. Hammond & Bogue then having money of Mr. Richardson purchased these two notes of Dickson, and extended the note then due, and agreed to, and did, release block 2 from the lien of the trust deed.

17. State briefly the circumstances attending the obtaining of the release by you of block 2.

Ans. I applied to Mr. Bogue to release block 2, and extend the note then due, as he had money then of Mr. Richardson's.
262 I having paid him about $10,000 one year before his paper was due; and as I was obliged to release block 2 from the Dickson lien to make my warranty deed to Goss and other parties to whom I was about selling more property in block 2 good. Then he went with me to Mr. Ayres, who was trustee in the Dickson trust deed, and applied for the release of block 2, Mr. Ayres and Mr. Bogue both executed the document.

18. State what parts of blocks 2 and 3 you still retained the title to, after what you had sold, at the time this suit was commenced by Henry Traver.

Ans. I retained the title to all of block 2, except 27 lots, I had about 6 or 7 lots in block 3 at that time.

19. On which lots were the buildings you spoke of having put up?

Ans. I put up a building on lots 31 & 32, in block 2, and one on lots 35 & 36, in block 2, one on lots 37 & 38, in block 3, and one on lots 42 & 43, in block 3.

20. State what kind of deeds you executed for those portions of the property you sold, and what consideration you received.

(Objected to by Mr. McCoy for irrelevancy & incompetency.)

Ans. The deeds were warranty deeds in each and all cases; the consideration was money and property, which I considered of equal value.

21. At the time of the transactions about which you have testified, what was your condition financially, and in regard to your ownership of property. What did you then believe yourself to be worth?

(Objected to by Mr. McCoy, as irrelevant & incompetent.)

Ans. Well, I had considerable property—some encumbered and some unencumbered. My cash assets were small. I certainly considered myself to be worth $60,000 or $70,000 at that time.

22. State when you first occupied a desk in the same office occupied by Hammond & Bogue.

263 Ans. About the middle of March, 1875.

23. State when you first formed a business co-partnership with Mr. Bogue, and for what purpose?

Ans. About the middle of March, 1875, we made the agreement, but it was to date from the 1st of March, and for the purpose of selling real estate on commission.

24. At the time when you procured the endorsement of Snyder & Lee on the Dickson notes, what was their financial standing & responsibility with respect to a security of that amount?

Ans. Oh, it was good at that time.

25. Up to the time of the commencement of this suit by Henry Traver, what, if any, communication had you ever made to Hammond & Bogue, or either of them, in regard to the arrangement or agreement about this land between the Travers, or between you and the Travers, or either of them?

Ans. I never had communicated anything to them, or either of them.

26. State whether you had any conversation with Michael Traver shortly before procuring the release of block 2 with respect to the procuring of such release; and, if so, state the substance and the time of such conversation.

(Objected to by Mr. McCoy.)

Ans. I had a conversation with Michael some few days previous to obtaining the release, and also a few days previous to the Goss transaction. He asked me at each time about paying up the Dickson note then due, as Henry was considerably troubled because the interest wasn't paid in December when due. I told him that the only way to straighten the thing up was in some way to move the property, and I would push it in some way so as to pay the note, or get from Dickson's hands, as he, Dickson, was causing me much trouble by threatening foreclosures & by repeated dunning for the money. After Abell & Hotchkiss reported to me Mr. Goss' offer, I made know the same to Michael, and told him that I would raise

264 enough money, with the $6,000 I was to receive from Goss, to pay one set of notes—the Richardson notes on which he was endorser—and try and get the same party to purchase & carry the Dickson notes so that there would be no foreclosure that year and have block 2 released, so that I could carry out other sales then in progress. All this occurred principally at my office in the Nixon building. Michael told me to do the best I could and save any chance for foreclosure which would deprive Henry of his rights in block 1 at that time.

27. State the reason why you failed to go on, and finally procure

a release of block 1 in pursuance of your understanding with Michael Traver?

Ans. I was unable to transact any more sales, or in any way to dispose of the property I had then in Traver's subdivision, or to close up contracts then bargained for on account of an injunction procured by Henry Traver, complainant, in this case.

28. State more distinctly how you were affected by said injunction?

Ans. One house with 4 lots in block 2 (lots 33, 34, 35 & 36) I had previously conveyed to John Pearson, or his wife Mary Ann, for a house on West Jackson street, and some land just north of this in Lawndale, which equity was lost to me, being unable to turn the same by reason of tying up this, Traver's, property by the injunction; and also a sale of lots 31 & 32, with a building in block 2, to David Dana, who moved from Arlington, Illinois, into said house and waited for more than a year for a deed of the same. In fact I was unable to use or turn any of the Traver's property.

29. You stated that it was the understanding in the arrangement you made with the Travers that block 1 was to be the last part of the property released; please state more distinctly anything that was said by Henry Travers in respect to that.

265 Ans. Michael brought Henry Traver into my office previous to our consummating this bargain to ratify his statements made to Henry in relation to my taking the land; Henry asked me if it was so that I would take this land and carry out this contract with him, so that he wouldn't be called on to pay these Dickson notes as Michael had told him that I would. I stated if it was mutually agreed that I could handle the property as my own, and sell of- blocks 2 & 3, from time to time, leaving block 1 to be released on payment of the last note, he said he was willing. We then made arrangements for a number of abstracts to be printed, Henry agreeing himself to take one for each of the lots he then held, and paying for the same *pro rata* what they cost me.

Adjourned to 11 a. m. Saturday, 2d March, 1878.

11 A. M., *2d March.*

Parties met according to adjournment.

Direct examination of JAS. C. HYDE, continued by Mr. INGALLS:

30. I wish to ask you in regard to your application to Hammond & Bogue, to procure them to receive payment of the Richardson mortgage, and in respect to procuring them to purchase the Dixon notes. State whether these applications were made at the same time or at different times?

Objected to by Mr. McCoy.

Ans. The applications were made at the same time asking them to release the Richardson mortgage, and purchase the other notes—the Dixon notes—and release block 2, so that I could consummate my sales then in progress.

31. Then I understand that while the deeds of trust, which were made to secure the payment of the four thousand and six thousand dollar notes to Mr. Richardson were still in force, and before those notes were either of them payable, you proposed to Hammond & Bogue to receive payment of that Richardson encumbrance, and take up or purchase the Dixon encumbrance, so that they
266 should hold the Dixon encumbrance, instead of the one that had been made to Richardson, and which he then held. Is that the fact?

A. It is.

Both question and answer objected to by Mr. McCoy, question being leading.

32. State your objection in procuring Hammond & Bogue to re-ceceive payment of the Richardson encumbrance and purchase the Dixon encumbrance, and to consent to the release of block 2.

Mr. McCoy. I object to his motives and his object.

A. My object was first to save the property from forelosure under the Dixon note then due, and to realize on the sale of some property in said block 2, and pay the money received on the encumbrances on said block.

33. Was that the object?

A. That was the object.

34. I wish to call your attention to the conversation testified about by Michael Traver in answer to the fifteenth direct interrogatory, which he stated he had with you on the subject of the release of block 2. Sthate the substance of that conversation reffer-ed to by Michael Traver, according to your recollection of the same?

A. Michael Traver stated in that answer, that he did not see me until after the release was obtained, which was not so. He also said that I told him that Bogue and myself were partners, which was not so. He also said that I told him that Bogue had the notes in his office, and I could arrange and handle them when I pleased, which was not so. That I told him that I thought I would be able soon to take up the other notes and release the block is the fact. That I requested not to have his brother make any trouble in the matter, is the fact. That he stated to me that he did not want to have his brother think that he was linked with myself into any
267 thing of that kind. I don't think the conversation occurred.

35. You have no recollection of it?

Ans. No, sir; he said in place of this last clause in his answer, he said that he would prefer having me pay $5,000 on that note and release block 2 and let block 1 remain for $5,000 instead of $10,000. That, I believe, is about all the objection he made at that time. This was after the release.

Cross-examination by Mr. McCoy:

X 1. You say you was a real estate broker; are you in that business now?

A. I am.

X 2. Where is your office?

A. My real estate office is a room 9, 95 Washington St.

X 3. Have you been there this morning?

A. No, sir.

X 4. State when your last real estate transaction was, and who with.

(Objected to by Mr. Ingalls.)

A. About an hour ago, with Mr. Plat.

X 5. What is his first name?

A. I don't know; he is an attorney with Sherman & High, in their office.

X 6. Is it not a fact that you are engaged in clerking?

A. A few hours a day I am.

X 7. How long?

A. Some days four hours, some days six.

X 8. Who with?

A. In the grain inspection department.

X 9. Is not that your real business now?

A. No, sir; not entirely.

X 10. From four to six hour every day?

A. Yes, sir.

X 11. What part of the day are you engaged in this grain business?

268 A. From nine to eleven, and from one until the reports are made up—sometimes three, sometimes five.

X 12. You are not in your real estate office, then, when you are attending to this grain business?

A. No, sir.

X 13. Please state to the master the contract you made with Michael Traver about block 2 and 3, in Traver's subdivision. State it as brief as you can. Please state the contract and nothing else.

A. My contract with Michael Traver was to take the property and the securities that he had at that time; to carry out the contracts that he and his brother had made; to handle the property—sell and handle it as best I could—obtain what release was necessary for the purpose, and in the end to reserve to Henry block 1 and some eight lots in block 3 that was not conveyed to me, he having quit-claimed to Henry his interest to these two blocks, for what consideration I know not.

X 14. What consideration were you to get for doing what you state?

A. All the profits I could make.

X 15. What properly do you mean?

A. What should come to me, together with the securities that Michael Traver had turned over to me.

X 16. No reference to block 1?

A. No reference.

X 17. Block 1 was never conveyed to you?

A. Never.

X 18. Never was intended to be conveyed?
A. I don't know that it was.
X 19. That belonged to Henry J. Traver—block 1?
A. It was to belong to Henry J. Traver.
X 20. You had no interest in it?
A. No interest in it.
269 X 21. Then, if you had no interest in it, why did you tell Enos Ayres, when you obtained the release to block 2 from the Dixon mortgage, that you owned block 1?
A. I didn't so state to him.
X 22. You state that positively?
A. I do.
X 23. You are as sure of that as anything you have testified to?
A. I am.
X 24. Were you present when that release was signed?
A. No, sir.
X 25. State whether you had more than one meeting with Mr. Ayres in relation to the release from block 2.
A. Only one, I think.
X 26. Where did you go to see him?
A. In his office, I think—Reaper block.
X 27. Did you and he ever go to Kean, Preston & Co.'s banking house in reference to this matter?
A. I don't remember.
X 28. I mean in reference to this second release.
A. I don't remember that we did.
X 29. Then, in your testimony, direct as well as cross-examination, when you speak of taking charge of property, you have reference only to that property that was conveyed to you by Michael Traver, and that which he held securities on?
A. Blocks 2 and 3, that Michael Traver had turned over to me, excepting eight lots in block 3.
X 30. You said in your direct examination that after you made the contract with Dickson that you spoke of, that Michael Traver—you said "the Travers were to get their papers ready for me and pass them over"; what papers was Henry J. Travers to get?
A. Henry J. Traver was to quit-claim his interest in the property that he was to convey to Michael, which had not been done.
270 X 31. Was not that done before?
A. No, sir.
X 32. Well, that was not conveying to you?
A. It was conveyed to Michael so that Michael could convey it to me.
X 33. When did you make the contract with Michael; give the date?
A. The 6th or 7th of January, 1873, I think.
X 34. How did these deeds of Michael to you and the deed from *Ayer* (Earl) to you, etc., come to be dated on the 28th of December, 1872?
A. It was to count from that date as the date to compute the interest. The notes that I was to give to Hammond & Bogue was to

date from the money that I could get at that time—purchase money; we dated it all from that date.

X 35. How did it come that the Hammond & Bogue paper and the other paper that I have spoken of were dated December, 1872, when you say the contract was made the 7th of January, 1873?

A. I had to count interest from that date.

X 36. State how it came that you had to count the interest back to that date?

A. They had a certain sum of money of $10,000, that was to draw interest from that date—28th of December. I had applied for $10,000 from them to use on another property, and I used that money and this property in place of the other property that I was to give them.

X 37. You say these notes given December 28th, 1872, were payable to Michael Traver?

A. Yes, sir.

X 38. And you say that Michael Traver endorsed them; to whom?

A. Richardson.

X 39. Have those notes been paid?

A. They have.

271 X 40. Have you got them?

A. No, sir.

X 41. Where are they?

A. I think they are with the other papers.

X 42. With what other papers?

A. When this suit was commenced they requested the notes, some of the attorneys, probably Mr. Ingalls.

X 43. They are under your control.

A. I presume so; I presume I could get them.

X 44. Will you produce them here?

A. I have not got them.

X 45. If they are under your control, can't you produce them?

A. I can go and ask for them I suppose.

X 46. Well, I ask you to produce them on this trial, will you do so?

A. I guess so.

X 47. When were they paid?

A. In January or the first part of February, 1875.

X 48. The $4,000 note which you gave to Michael Traver, and by him endorsed, was secured by deed of trust to Henry L. Hammond on lots 1, 2, 3, 4, 5, 6, 7, 9, 40, 41, 42, 43, 44, 45, 46, 47, 48, in block 2, Traver's subdivision, was it not?

A. As the abstract states; yes, sir.

X 49. Have these lots been released by Hammond?

A. I don't know; the continuation of the abstract will tell; I cannot say.

X 50. You say you are a real estate broker?

A. I am.

X 51. Do you keep books of all your transactions?

A. I do.

X 52. Well then your books will show whether these lots were released by Hammond or not.

A. I don't put that on my books; the abstract show that.

X 53. Have you got the abstract continued down to this transaction?

272 A. I don't think I have; I have got a brief of it in my office in my book; I continue the abstract down as I have occasion to sell lots.

X 54. State whether those lots running from 1 to 48 in block 2, as enumerated in my previous interrogatory have been released or not by Henry L. Hammond?

A. Lots, 1 to 19 have.

X 55. 19 ain't included.

A. You said from 1 to 48.

X 56. I said, as given in my previous question.

A. (Referring to abstract) lots 1 to 9 have; 41 and 42 I think have; whether the other 7 have or not I do not know from memory.

X 57. Your books or your brief of abstract will show.

A. It will up to the time I brought it down.

X 58. The note that you gave to Hammond which was endorsed Michael Traver for $6,000, was secured on lots 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39, in block 2, was it not?

A. Yes, sir.

X 59. State whether they have been released or not.

A. From memory I know from 10 to 15 has and from 30 to 39, whether the others have or not, I don't remember.

X 60. Who were they released to?

A. Released to me.

X 61. Then they were free of encumbrance after you received the second release from the Dixon mortgage?

A. Yes, sir.

X 62. You stated in your direct examination that at the time that this suit was brought that you held the title to all the lots in block 2 except 27, you said that, didn't you?

A. I think I so stated.

273 X 63. Will you state which of those lots that you held—which ones they are? State them by number—which ones they are that you held title to.

A. I would have to look to my brief to learn that.

X 64. Do you know how many lots there were in this block?

A. 48.

X. 65. That would leave 21 in you?

A. I think so.

X 66. Now, will you bring a statement in writing of those 21 lots, the title of which was in you unencumbered at the time this suit was commenced, and attach it to this your deposition?

A. I cannot bring you title to 21 lots unencumbered. I didn't so state that they were unencumbered.

X 67. How the title was at the time?

A. I can bring you a statement how the title was.

X 68. And attach it to this your deposition?

A. I can do that.

X 69. Were any of them—that is, these 21 lots—in you unencumbered?

A. No, sir.

X 70. How were they encumbered?

A. I cannot remember exactly, unless I look up the papers; some three years ago; my memory don't serve me correctly.

X 71. You may state whether they stand now, so far as the title is concerned, in the same manner as they did when this suit was commenced.

A. That I could not state. I don't know whether there has been any foreclosure or not.

X 72. I am asking you so far as your acts are concerned.

A. Yes, sir; so far as my acts are concerned.

X 73. And you cannot tell how they were encumbered, or to what extent they were encumbered—these 21 lots?

A. Not until I look at the records.

274 X 74. When you look at the record, and when you produced your statement, I want you also to show how much and how they were encumbered.

A. Yes, sir.

X 75. Will you now state how many of those lots you held in your name in block 3 at the time this suit was commenced?

A. I cannot remember, sir.

X 76. Didn't you state on your direct examination that you held about five.

A. I think so.

X 77. Will you produce a statement after looking at your books, and such other information as you may choose, a statement of the lots, giving their numbers, that you owned in block 3 at the time the suit was commenced?

A. It requires money to do that, and I don't want to go to the recorder's office and pay for bringing down the abstract for this. I can get it from my books.

X 78. That is what I want.

A. Yes, sir.

X 79. I suppose your books are correct, are they not?

A. They are up to that time.

X 80. You stated in your direct examination that you commenced to improve the property. When did you commence to improve it?

A. Immediately after getting the deeds of the same.

X 81. That was in January, 1873?

A. The spring of 1873.

X 82. Can you now state the amount of assets that you held from the proceeds of the sales of these lots, in the shape of notes and contracts, at the time that this suit was commenced?

A. No, sir.

X 83. Can't you approximate to the amount?

A. I don't think it possible.

X 84. You have stated in your examination that if it had
275 not been for this suit you would have been able to pay off the two remaining notes—Dixon notes?

A. Yes, sir.

X. 85. Will you state the resources from which you expected to pay them off?

A. I was negotiating the sale of most of that property, together with other property I had, which would turn into clear property, that I could thus meet the whole liabilities, aside from what I had already bargained for for cash.

X. 86. But you say these lots were encumbered?

A. Yes, sir.

X. 87. And you cannot tell now the amount of the encumbrance?

A. Not until I see the papers.

X. 88. This suit did not prevent you from raising money on other property, did it?

A. Yes, sir; it balked me from the start.

X. 89. How did it prevent you from raising money on other property?

A. Other parties commenced to question about this suit, and commenced to crowd me for money, seeing that I had a suit pending; it injured my credit; and these parties to whom I had sold noised it abroad, and it was impossible to make any bargain on account of their going and seeing the other parties.

X. 90. When did Bogue purchase the last two notes from Dixon?

A. In January, 1875.

X 91. What was his business?

A. He was a loan broker—money and loan broker; Hammond & Bogue.

X 92. Was this purchase with his own money?

A. No, sir; not that I know of. No; he then said it was Richardson money.

X 93. He was acting as agent?

A. He was acting as agent for Richardson.

276 X 94. It appears that he had acted as agent in the beginning of the year 1873?

A. Yes, sir; they were.

X 95. You stated to-day that your object was in getting the last release to take up the Richardson notes, the Dixon notes remaining as a lien on the property, didn't you?

A. I did.

X 96. Now, on what property did it remain as a lien?

A. On block 1.

X 97. Then you got your property you had an interest in entirely clear, and shifted the lien for those last two notes—Dixon notes—over onto block 1, being Henry J. Traver's property, didn't you?

A. I did.

X 98. So the object, so far as the papers show, that you had was

to get your own property free and leave his burdened with the incumbrance?

A. I treated that note as any note, as I was endorsed on it. I treated it as my paper.

X 99. You say all this was encumbered—block 2.

A. Yes, sir; I could not move unless some of it was released, and I was obliged to get some of it released so that I could give a deed to Goss.

X 100. What did you do with that $6,000?

A. Paid Hammond & Bogue.

X 101. On what notes?

A. Hyde notes, endorsed by Traver.

X 102. When did you first see Henry J. Traver?

A. When I first met him; I think I seen him here in 1869—1868 or '9, when they came here from Ohio; it may have been as late as 1870—before the fire—when I first saw Henry J. Traver.

X 103. When did you first have any business with Henry J. Traver?

277 A. Before the fire in Snyder & Lee's office—acting in a business capacity for them.

X 104. Not about this property?

A. No, sir.

X 105. I will ask you if the first time that you ever had any business with Henry J. Traver was not sometime in July, 1873, when he came to make arrangements with you about the payment of taxes on blocks 1?

A. Decidedly not.

X 106. You paid taxes for him, didn't you, on block 1?

A. Yes, sir.

X 107. He furnished the money for block 1?

A. Yes, sir, block 1.

X 108. You gave him a receipt?

A. We each got a receipt in the collector's office.

X 109. But you gave him a receipt yourself for the money paid by him.

A. I don't remember; at all events he had a receipt, a proper one.

Mr. McCoy: I defer any further examination of the witness until he brings in a statement of the lots that he owned in block 2 and block 3, together with the incumbrances thereon; and also the notes that he gave to Michael Traver, said to be endorsed to Richardson.

Adjourned to 2 p. m., Monday, 4th March, 1878.

2 P. M., MARCH 4TH, 1878.

Parties met pursuant to adjournment, when OSWELL BOGUE, a witness produced, sworn and examined, on behalf of Charles A. Richardson, testified as follows:

278 Direct examination by Mr. INGALLS:

1. State your name, age, residence, and occupation.

A. Oswell A. Bogue; 46 years old; residence, Chicago; real estate business.

2. State whether you was a member of the firm of Hammond & Bogue during the year 1872, and up to and including 1875; and, if so, state what the business of the firm of Hammond & Bogue was.

A. I was a member of that firm during that time; the business of Hammond & Bogue was loan agents.

3. State whether the firm of Hammond & Bogue made any loans for and in behalf of Charles A. Richardson upon a security of lands in what is known as Traver's subdivision; and, if so, state when the first loan was made, and its amount, and what security was taken?

A. It did make loans on the 28th day of December, 1872, one sum of $6,000, and one sum of $4,000, secured by block 2, in Traver's subdivision.

4. State to whom the loan was made, on what time, and give the details of the matter.

A. The $4,000 loan was dated December 28, 1872, for three yeas, secured by lots 1 to 9, inclusive, and 40 to 48, inclusive, in block 2 of Traver's subdivision, in section 23, 39, 13. The $6,000 loan was dated December 28th, 1872, for three years, to James C. Hyde, secured on lots 10 to 39, inclusive, block 2, in Traver's subdivision in section 23, 39, 13. Both these notes were given by James C. Hyde, payable to the order of Michael Traver. They were both payable in three years from date.

5. State the rate of interest.

A. Eight per cent., semi-annually.

6. State what amount of money Hammond & Bogue paid for those notes, secured as you have stated, and whose money it was?

279 A. The amount of money we paid for the notes?

7. Yes.

A. The loans were considered, the 4,000 and the 6,000, as I stated; the notes drew eight per cent. The money was made equal to ten per cent. per annum, and the difference between eight and ten—two per cent.—was allowed.

8. I understand that you made the loans so that a sufficient amount of money was deducted to make the notes equal to ten per cent. proper?

A. That is it exactly, but I cannot tell you the exact amount.

9. To whom did the money belong that was advanced on this loan?

A. Charles A. Richardson, of Boston; money received from him.

10. At the time of this transaction, where was the office of Hammond & Bogue?

A. It was in the basement of 160 La Salle street.

11. Where was Mr. Hyde's office at that time?

A. It was with Snyder & Lee, in the Nixon building.

12. What number?

A. I don't know. It was on the corner of Monroe & La Salle; northeast corner.

13. State the circumstances under which said loan was made, and what, if anything, was understood or said in regard to this loan being a first incumbrance or a junior incumbrance.

Mr. McCoy: I object to any conversation.

A. The circumstances of the loan was, we had some money to loan. Mr. Hyde showed us the security which he wanted to raise money on, and we loaned the money to him, supposing or meaning that it should be a first loan. I think Mr. Hyde stated that there was an incumbrance there; that he wanted this money, or part of it, to remove, before this would be an absolute first loan.

14. State whether this loan was afterwards paid or taken
280 up by Mr. Hyde, and under what circumstances; whether the money was reinvested in any security on land in Traver's subdivision, and state the time that such transaction occurred.

A. There was other paper taken—substitued for this, I will say; Mr. Hyde came into our office on the 15th of January, 1875, and said to me that——

Mr. McCoy: I object to what Mr. Hyde said.

that there was some paper known as the Dixon notes, which was a first lien upon blocks 1 and 2 in Traver's subdivision, sent here from Cincinnati for collection, and that it was necessary, in order to save the Richardson loan, which we had made to him of $10,000, that it was necessary for me to buy that paper in order to save the loan we made to him; that paper was in the hands of Preston, Kean & Co., or Lunt, Preston & Kean—that firm, however—and I went to Preston, Kean & Co., and bought the paper to take the place of the $10,000 paper of Richardson, or on account of Richardson.

15. For whom were you acting in the purchase of these Dixon notes and securities?

A. C. A. Richardson, of Boston.

16. I understood you that the same amount of money which you had invested for Mr. Richardson in the security first mentioned of the two notes, one for 6,000 and one for 4,000, payable to Michael Traver, and the deeds of trust securing them, was invested in the Dixon notes in behalf of Mr. Richardson.

A. Yes, sir; the same amount, $10,000, was paid for the paper.

17. When did you first discover, after the time of making the first loan, that a senior incumbrance remained on the property, so that your first incumbrance taken for Mr. Richardson was not a first lien?

A. On the 15th day of January, 1875, the day I bought the Dixon notes.

281 18. In what manner did you discover it?

A. By information from Mr. Hyde, and by his showing me the abstract and saying that block 2 had not been released, as he intended when the loan was made.

19. State what, if any, agreement you made with Mr. Hyde in regard to the release of block 2 of the property, and when?

(Objected to by Mr. McCoy.)

A. Under what trust deed?

20. I mean the release of block 2 from the Dickson incumbrance.

A. Block 2 was to be released and block 1 taken in its place, securing the Dickson notes.

21. State when.

A. At the same time the notes were bought, or about that time or a day or two after.

22. State what you did in regard to having a release made of said block 2 from the Dixon incumbrance.

A. I went with Mr. Hyde to Enos Ayres, taking the Dixon notes with me, and requested a release of block 2 from that trust deed from the original trust deed. I represented to Mr. Ayres that in point of business I was the legal holder of those Dixon notes, and Mr. Ayres gave a release. I cannot give you the date of it. As near as I can remember that release deed was about (referring to the abstract)—I see by the abstract it was the 29th of January.

23. Did Mr. Hyde accompany you when you went to get the release made?

A. He did.

24. What statements, if any, did Mr. Hyde make in regard to the release in your presence and to whom?

A. Well, I cannot say that there were any direct statements made. The particular point that arose was when I showed him the notes and asked him for a release was, whether or not I owned the notes or whether I represented the owner of the notes. I told him that I represented the owner of the notes, and he re-
282 quested me then to sign the release deed as the legal owner of the notes, which I did.

25. What statement, if any, were made in regard to the ownership of the land, and by whom?

A. There was no question asked as to the ownership of the land at that time; either blocks 1 or 2.

26. At the time this release was made had you any knowledge in regard to the ownership of the land; if you had, who did you then believe to be the owner?

(Objected to by Mr. McCoy.)

A. I will say that I had no absolute knowledge; we made a loan to Mr. Hyde, believing him, supposing him to be the owner of the property. As for absolute knowledge as to his ownership, I cannot say that I knew it; that I knew that anybody owned it.

Mr. McCoy. I object to the suppositions of witness.

27. Had you, at the time the release was, made any knowledge that Henry J. Traver owned any part of the property?

A. I cannot say that I had.

28. When was it first brought to your knowledge or notice that *that* Henry J. Traver owned or claimed an interest in the property?

A. I should say it was between six and eight weeks after I purchased the Dixon notes; somewhere within that time; I cannot say exactly.

29. In what way did you first have notice that Henry J. Traver claimed any interest in the property?

A. By Mr. Traver coming into my office and asking in relation to the ownership of block 1.

30. State what was said on that occasion by him and yourself.

A. Mr. Traver asked me if I knew who owned block 1. I told him I supposed Mr. Hyde did. He told me that he did not, which was a great surprise to me at the time. The business had been done with Mr. Hyde, supposing or believing him to be the
283 owner of both blocks. I knew nothing to the contrary until Mr. Traver told me.

31. On that day that Henry J. Traver came to your office, as you have related, did you have any interview afterwards with Michael Traver?

A. I did; I think it was in the afternoon of the same day.

32. State what was said between yourself and Michael Traver at that interview.

A. I don't know that I can state the exact words.

33. In substance.

A. I inquired of Mr. Michael Traver as to Mr. Hyde's owning block 1, stating that his brother, Henry J. Traver, had told me that Mr. Hyde did not own block 1, and Michael told me that that was so, and I think said something about commencing a suit. I think he told me that he should commence a suit. I told him that he had better wait a while and see if the matter could not be arranged. If Mr. Hyde was not the owner of the land—if the property did not justly belong there—that it could be arranged in some manner, I thought, if Mr. Hyde was let alone. I think that was about the heft of the conversation. I think I told Michael the interest, as well as myself, if the matter was left with Mr. Hyde—by our trying and working together the matter would all come out right; something to that effect. I think that is about all the conversation there was. That is a conversation that I never thought of afterwards. That is about it.

34. Did you during that conversation state to Michael Traver, in substance, that you was aware that all of block 1 belonged to his brother, Henry Traver, as Mr. Hyde had frequently told you [of] the agreement that he (Michael) had with his brother?

A. I did not at that time.

35. Did you at any time make any such statement to Michael Traver; if you did, when and what was it?

A. After this conversation with Henry Traver as to
284 Traver's owning block 1, I spoke to Mr. Hyde as to the ownership of block 1, who the title was in, and I also asked him in relation to a contract. He told me that he held a contract with the Travers. I did not inquire as to the points of the con-

tract; never saw any contract. I think I told Michael Traver, in a conversation aftewards, that Mr. Hyde had told me that there was a contract in existence. I think the matter of the contract, Mr. Hyde told me, had reference to the whole purchase of blocks 1, 2, and 3.

36. Did you at any time tell Michael Traver, in substance, that you had known of any time previous to the interview you speak of with Henry Traver that you was aware that block 1 belonged to Henry, or that Mr. Hyde had frequently told you about an agreement that he (Michael) had with his brother?

A. Neither. I can say no to both questions.

37. Did you at the time you took these securieties, or any of them, make an examination of the abstracts of title to this property; and if you did not, how did it happen that you did not?

A. I made no examination of the abstract individually at the time the loans were made. The abstract was given to us. Mr. Hammond might have looked over the abstract; I did not. We really (or I did) took Mr. Hyde's word that the title was as he stated at the times the two loans were made on block 2.

38. How was it when you purchased the Dixon notes?

A. As regards looking up the title, I took his word at that time, as I did before, at the same time his showing me the abstract that block 2 was not released from the Dixon paper.

39. Did you make any further examination of the abstract than to see that the Dixon paper was secured—stood on the property?

A. I did not.

40. Did you, from anything that you had seen in that ab-
285 stract, discover that Henry Traver had any interest in said property?

Objected to by Mr. McCoy, as leading and irrelevant.

A. I did not.

41. State how many of these Dixon's notes there were which you purchased for Mr. Richardson.

A. Two.

42. State which ones these are of the four which constitute the original encumbrance.

A. They were the two last notes due, or the third and fourth notes.

43. State who is the owner of those two notes, and who has been the owner since the time of the purchase of the same by you as agent of Mr. Richardson.

A. Charles A. Richardson, of Boston.

44. State what, if anything, has been paid on those notes since the time they were purchased by you for Mr. Richardson.

A. Nothing; I think nothing has been paid on them.

45. State what knowledge, if any, you had at the time the release was made of block 2 from the Dixon encumbrance, of any agreement between Mr. Hyde and Michael Traver, or between Michael and Henry Traver, in regard to Traver's subdivision, or any of it.

A. I cannot say that I know anything.

46. Had you any knowledge at that time?

A. I knew of no agreement or understanding between them.

47. State whether Mr. Hyde afterwards took a desk in the office of Hammond and Bogue; and, if so, when?

A. About the first of March, 1875, Mr. Hyde came into the office of Hammond & Bogue; moved his desk in there.

48. State whether you formed any business connection with Mr. Hyde; and, if so, when and for what purpose?

A. Well, soon after the first of March.

49. For what purpose?

A. For doing a real estate commission business.

286 50. Had any partnership existed between you and Mr. Hyde before that time?

A. No, sir.

51. State what, at the present time, is Mr. Hyde's situation financially, whether solvent or insolvent.

A. I should consider it insolvent, to the best of my knowledge; he is now in bankruptcy; filed a petition in bankruptcy some six months ago, I should think.

52. What is the present financial condition of Snyder & Lee, and their responsibility?

A. Judging from what I can see, without any absolute knowledge, I should say they were insolvent; I don't say this from having any business transations with them.

Cross-examination by Mr. McCoy:

X 1. Did you and Hammond keep books of your transactions in the years 1872 and 1873?

A. Hammond kept the books.

X 2. For your firm?

A. Yes, sir.

X 3. I suppose that this loan of yours made on the 28th of December, 1872, is entered on your books?

A. I suppose so, sir; I had nothing to do with the books; Mr. Hammond kept them exclusively.

X 4. Will you please bring a statement from your books, and show how that entry is on them.

A. I or Mr. Hammond will do so.

X. 5. I see you have had a paper in your hand to refresh your memory; what was that paper taken from; what is it?

A. It is a memorandum of dates.

X 6. When was it made?

A. It was made within last week.

287 X 7. Where did you get the items out of which the paper is made?

A. Some from recollection.

X 8. Where did you get the rest?

A. Some from notes.

X 9. What notes?

A. The notes in question.

X 10. Well, describe the notes.

A. Well, you may say some of the notes were taken from the original paper of the four and six thousand dollar loans.

X 11. Have you got those notes yet?

A. Mr. Hammond has those notes in his possession.

X 12. That is, the notes made by Mr. Hyde to Michael Traver, and by him endorsed to Mr. Richardson?

A. Notes made by Mr. Hyde to the order of Michael Traver; which were the loans I cannot say; they were not made to the order of Mr. Richardson, but for the Richardson loan.

X 13. They were dated the 28th of December, 1872?

A. Certainly.

X 14. Have you got them?

A. Mr. Hammond has them.

X 15. What is Mr. Hammond doing with them?

A. He is keeping all the papers, except the papers that have been placed in the hands of Mr. Ingalls concerning the Richardson matter.

X 16. They are Mr. Ayres' notes, are they not; I mean Mr. Hyde's notes?

A. They were the original notes.

X 17. Made by Mr. Hyde?

A. Yes, sir; the original notes for the four and six thousand dollars.

X 18. When they are paid they belonged to Mr. Hyde, do they not?

A. I should suppose they would.

X 19. Why has not Mr. Hyde got them?

A. I can not tell you.

288 X 20. Are they paid?

A. Well, I say they are by substitution.

X 21. Did you ever deliver them up as paid to Mr. Hyde?

A. No, sir; never delivered them up as paid.

X 22. Then they really never were paid?

A. Yes, sir; we consider them paid.

X 23. Why don't you deliver them up to Mr. Hyde, then?

A. I cannot give you any reason, that I know of; I cannot give you any reason for not having delivered them to Mr. Hyde.

X 24. Is it not a fact that you have a claim on these notes yet?

A. I cannot say that we have.

X 25. Then they are fully paid and cancelled?

A. I cannot say that they are cancelled.

X 26. Are they fully paid?

A. I am under the impression they are; they are, as far as I know.

X 27. Mr. Hyde swears that money was not obtained, nor these notes were not delivered until about the 8th of January, 1873; state why these notes were all dated on the 28th of December, 1872.

A. They were not delivered until near January.

X 28. January 7th or 8th, 1873?

A. I do not know that I can answer that question, except in a general way; when the loan was made, if the money was not all

passed over at the time, it was paid at the time Mr. Hyde called for the money; all the money might not have been paid over until after the first days of January.

X 29. Was any of it paid on the 28th of December, 1872?

A. I cannot answer that question; Mr. Hammond had the paying out of the money.

X 30. Will your books show when Mr. Hyde got the money?

A. I should suppose they would show it, certainly; it was no doubt paid to him in a check, and Mr. Hammond can prob-
289 ably show the checks if necessary; I had nothing to do with paying out the money or keeping the books.

X 31. You say you are loan agents; what do you mean by that?

A. Loaning money for parties who might send it to us for that purpose for investment.

X 32. What securities do you loan or did you loan on?

A. Real estate securities.

X 33. Then you wish to be understood that you, as loan agents, loaning on real estate as security, loan money on titles on the say so of a land broker, is that so?

A. Not as a general thing, no, sir; there may be times when we vary a little, but as a general thing we loan on abstract title.

X 34. Then you wish to be understood that sometimes you loan $10,000 of money on the say-so of a real estate broker without examining the title?

A. No; I do not mean to be understood in that broad sense: I say there are times when we have paid over a part of the money, perhaps paid it over without thoroughly examining the abstract, without looking it over ourselves, but taking a man's word whom we have been accustomed to do business with and having found everything all right; I have gone, perhaps, too much on the supposition that a business man was entitled to credit on his word.

X 35. A real estate broker like Mr. Hyde?

A. I did not consider Mr. Hyde a real estate broker at the time; Mr. Hyde at the time this loan was made was supposed to be good, and we did business with him as being good.

X 36. Good how?

A. Responsible financially.

X 37. But how was he, and how is he now, as a reliable man?

A. As far as Mr. Hyde's transactions with me are concerned, as far as I know, I do not know that Mr. Hyde has flatly falsi-
290 fied or lied, as near as I can judge from what I have seen and done with him in some cases, he has gone around considerably, perhaps as the most of real estate men have, but I cannot say that I have found Mr. Hyde absolutely dishonest; in the year 1872, when we made this loan to him, and along from the winter to the spring of 1873, I looked on Mr. Hyde as good, both financially and as a man of his word; at that time I would have taken Mr. Hyde's word as far as any man I was doing business with; never had any transaction with him but what was straightforward.

X 38. You say that when Mr. Hyde loaned you this money, he gave you to understand—I mean when you loaned Mr. Hyde this

money, in December, 1872, he gave you to understand that these notes given by himself to Michael Traver, and endorsed by Traver, secured by deed of trust on block 2, was the first encumbrance?

A. They were not absolutely a first encumbrance. He was to use this money as a portion of it, I can not say now whether it was all of it, to release the first encumbrances on blocks 1 and 2, so that this loan of ours of $10,000 was to be a first encumbrance.

X 39. Didn't you state in your direct examination, that it was understood that $4,000 and the $6,000 given by Mr. Hyde, secured by deed of trust to Mr. Hammond was a first lien?

A. No, sir; it was to be just exactly as I state now.

X 40. But you say afterwards he came round to show you that it was a first lien?

A. No, I did not say that at all; I said just exactly what I say now, when the mortgage or trust deed was given us he told us that there was a first lien which this money was to pay off; that is my very words in my direct testimony, as near as I can remember.

X 41. Didn't you state in your direct examination that
291 along about January, 1875, that Mr. Hyde brought you an abstract and showed you, which was the first time you had learned that this trust deed, or trust deeds, given to Mr. Hammond by him, was not a first lien?

A. After the loan was made; after the loan of his was made?

X 42. Didn't you state that?

A. Well, I may have said that that was the first intimation, but I think if you go back to the time we made him the loan you will find that I said that Mr. Hyde was to use a portion of that money to pay off——

X 43. That is not the question I asked you; whether you have not testified in your direct examination here that Mr. Hyde came to you in the forepart of January, 1875, and showed you by abstract that the trust deed to Hammond, securing the notes of Mr. Hyde which were endorsed to Richardson, were not a first lien on block 2, and that was the first time that you learned the fact, or in substance that?

A. Well, I will answer that your question as it is put now to me covers two questions that I answered in my direct examination.

X 44. What are they?

A. First, as to the trust deed that Mr. Hyde showed me on the abstract, which was the trust deed belonging to and securing the Dixon notes; that was the first intimation that the loan from Hammond to Mr. Hyde was not a first lien. In my direct testimony I have testified that Mr. Hyde told us that there was a first lien upon that block 2; that a part of this money, or all of it, was to be used to pay that off. I didn't know whether he had paid it off or not until he came to me on the 15th of January and told me that it was necessary to buy these Dixon notes.

X 45. Why did he tell you that?

A. Because he knew he had not released a portion of that security to make our lien a first mortgage, and in order to save

292 the Richardson loan to him that it was necessary for me to buy up the Dixon paper.

X 46. Didn't you state in your direct examination that he came to you and showed you the abstract that brought that fact to your knowledge, that the Hammond notes were not a first lien, the abstract showing that it had not been released?

A. I did.

X 47. When you found that he failed to keep his word on his first contract, and made the Hammond trust deed the first lien, I want to know whether you bought this Richardson note at his request without any other and further examination of the title?

A. Except as I said for myself by the abstract.

X 48. Then you did look at the abstract before you bought the Dixon notes?

A. I did.

X 49. I will ask you if it was not that printed abstract (indicating), or one similar to it, that you have been examining to-day?

A. Yes, sir; I think it was either this or a copy like it.

X 50. From that abstract you found that the Dixon notes that you were then about to purchase, was a first lien on block 2 in Traver's subdivision.

A. I did.

X 51. Who was trustee as appeared by the abstract?

A. Enos Ayres.

X 52. Following a few conveyances, principally where Enos Ayres was made trustee, in that same abstract, you find a deed from Michael Traver and wife to Henry J. Traver for block 1, don't you?

A. I didn't at that time. I simply looked down to see as to that trust deed. I didn't examine the abstract thoroughly. Mr. Hyde came into the office and told me the condition of things, and I was simply surprised. In saying that I looked at the abstract,

293 and found that that was a first lien on the property, I don't intend to convey the idea that I went through a thorough examination of the title.

X 53 Mr. Ingalls asked you the question, if from anything you saw in that abstract, whether you had discovered any title to block 1, Traver's addition, in Henry J. Traver.

A. He did.

X 54. Then I suppose that when you came to the portion of the abstract that showed the deed from Michael Traver to Henry J. Traver, of block 1, you shut your eyes?

A. As I said before, I didn't examine the abstract thoroughly. I didn't examine it at all as to the ownership of the property. I examined where Mr. Hyde showed me the trust deed conveying the property.

X 65. Then again, I ask you, as a loan agent for eastern capitalists, if you again invested $10,000 in block 2 and block 1, Traver's subdivision, without ever examining the title thoroughly to see if it was good?

A. I did.

X 56. You took Mr. Hyde's word for a title, although he had deceived you in reference to the Hammond paper being a first lien on block 2?

A. With the information that I got from the abstract that the Dixon notes were a first mortgage, a first lien on the property.

X 57. Did you depend on the abstract or Mr. Hyde's say-so, which?

A. I depended upon both.

X 58. Now, I will ask you again, if that is the way you make loans for your eastern customers by a partial examination of the abstracts and then rely upon the word of parties you are loaning to for the balance?

A. If we consider they are entitled to consideration.

X 59. Will you state when you paid the money for those last two notes, called the Dixon notes, which you say you purchased
294 at Preston, Keen & Co.'s banking house; tell when you paid the money.

A. On the 15th and 28th of January, 1875; the 15th of January I paid part, and the 28th of January the balance.

X 60. How much did you pay in all?

A. I paid—well, I should say not far from $12,000—$11,500 to $12,000.

X 61. Was there any credits on those notes; I mean the last two notes that you bought January, 1875—any credits, except interest?

A. I think not.

X 62. Your books will show, then, exactly what you paid?

A. I cannot say that the books will show my payments to the bank for that paper; I think it will not show the first payment, as I paid that direct to the bank without its passing through Hammond's book.

X 63. You have an account with Mr. Richardson?

A. We had.

X 64. If you paid out five or six thousand dollars of his money would not that come on his books?

A. It did in the original loan to Mr. Hyde.

X 65. I mean this second purchase.

A. I don't know whether it did or not.

X 66. Will you make a statement from your books?

A. I have said that I would.

X 67. That is on another point, not on this; so you cannot tell now how much Mr. Hyde paid for those last two notes?

A. I cannot say; I think we paid for those two notes between eleven and twelve thousand dollars; ten thousand dollars belonged to Mr. Richardson, or was to take the place of the Richardson paper; Hammond & Bogue furnished some of the money to buy the paper; I did not understand that we had to credit C. A. Richardson.

X 68. Then I understand you to say that Mr. Richardson's
295 money did not buy all those notes—the full amount of these notes?

A. They were bought for the account of Mr. Richardson.

X 69. How much money of Mr. Richardson's went into the purchase of them?

A. There was $10,000 went into the paper for the account of Mr. Richardson.

X 70. And then Hammond & Bogue furnished the balance?

A. You might say, in one sense of the word, the money was all advanced in some way or other to buy the notes for Mr. Richardson's account.

X 71. Mr. Richardson did not have the money here at that time?

A. No, sir; but this paper, Dixon paper, was bought for him and given to him in place of the two first loans, one $4,000 and one $6,000, to keep his loan good.

X 72. Had the two first loans on $4,000 and one $6,000 been paid at that time by Mr. Hyde?

A. That was paid by this transaction.

X 73. How?

A. Now, for a portion of the money, you may say, for all the money that I paid to the bank, that money was received for a sale of portion of block 2, which had been release- from the Richardson mortgage; that money was paid right over on the Dixon paper to buy it; and for the balance Hammond and Bogue loaned, from time to time, money on different portions of block 2 to pay the balance of the Dixon paper.

X 74. When you purchased the notes, made the bargain to purchase the notes at the bank, did you pay the whole amount then?

A. Only part of it.

X 75. How much first?

A. You refer to the first money I paid?

X 76. I mean in these two notes of Dixon that you got at the banking-house of Preston, Kean & Co. State how much you paid, first installment, on the purchase of those notes.

296 A. About $6,000; I don't remember the exact amount.

X 77. Can you tell the date?

A. 15th day of January, 1875.

X 78. Where did you get the money to pay that?

A. From a sale of portion of block 2 by Mr. Hyde to a man from Kansas; I don't remember his name—Goss.

X 79. When did you make the next payment on the Dixon notes?

A. On the 28th of January.

X 80. How much did you pay them?

A. Fifty-five or six hundred dollars.

X 81. Did that pay it up in full?

A. That paid them up in full.

X 82. Where did you get the money?

A. Hammond & Bogue advanced part of it, and part of it came from one or two loans we made Mr. Hyde on a portion of block 2.

X 83. Whose money was that that you had loaned Mr. Hyde?

A. I cannot give you the names; Mr. Hammond will be able to give you the names.

X 84. How did these two Dixon notes happen to go to Preston, Kean & Co.'s bank at that time?

A. I cannot tell you, sir.

X 85. Were they both due?

A. They were both past due, I think.

X 86. I want you to state whether you don't recollect of Mr. Hyde and yourself going to Enos Ayres and taking him to the bank of Preston, Kean & Co., along about the 15th of January, and there was only one of the notes there at that time; the one that was due.

A. I cannot say as to that.

X 87. And Mr. Ayres stated that he would not release any property unless some party held both notes and without their consent.

297 A. I cannot say that he did not so say; I cannot say that I did not go to the bank with Mr. Ayres; if I did it has passed my memory.

X 88. Mr. Hyde went with you at the time. Will you swear that Mr. Hyde was with you when you and Mr. Ayres executed the release?

A. Why, I am safe in saying that he was; I won't say absolutely whether he was or not; my impression is that he was.

X 89. And went with you from Mr. Ayres' office to the bank of Preston, Kean & Co., didn't he?

A. Well, sir, I cannot say.

X 90. Where are those notes now that you bought?

A. Either Hammond or Mr. Ingalls has them; I don't know which. I know the papers in relation to this matter have been kept with Mr. Hammond and Mr. Ingalls; within the last year I have not kept track of any of the papers, because it has not been part of my business.

X 91. In the purchase of these last two notes Mr. Hyde, and yourself, and Mr. Hammond were paying money in by installments to Preston, Kean & Co.?

A. I paid the money in myself.

X 92. Mr. Hyde was helping to furnish it, was he not?

A. Yes, sir; Hammond and Bogue was helping to furnish it by different loans to Hyde on block 2.

X 93. When Mr. Hyde showed you the abstract, giving you the information that the Hyde notes given to Hammond, one for $4,000 and one for $6,000, secured by deed of trust from Hyde to Hammond, was not the first lien, you became somewhat alarmed, didn't you?

A. I did, from the fact that he had not done as he agreed.

X 94. Although he had not done as he agreed, you was willing to trust him, as regarded the title, without any further examination?

A. That is as to this $10,00 paper—Dixon's—with the in-
298 formation that I received from the abstract.

X 95. You then were very anxious to get that paper or get block 2 released from the Dixon notes, were you not?

A. I cannot say that I was at all anxious to release block 2.

X 96. Why, if block 2 had not been released and you had held on to the notes given by Mr. Hyde to Hammond, and secured by deed of trust from Mr. Hyde to Hammond, they would have been a second lien and likely to be sold out.

A. They would.

X 97. Then were you not anxious to have that block released?

A. I was anxious to buy up the paper so as to hold block 1 as well as block 2.

X 98. Why did you get block 2 released?

A. In order to refund the money to us that had been advanced by us for the two Dixon notes.

X 99. Then you were anxious to get it released in order to get the lien of the last Dixon notes shifted from block 2 to block 1, were you not?

A. To a great extent.

X 100. What made you think that Mr. Hyde owned block 1?

A. From the manner in which the business was transacted, I knew that Mr. Hyde was handling, as far as I could judge, blocks one, two, and three, and I had seen a sufficient amount of his transactions to satisfy myself that he was the owner of blocks 2 and 3.

X 101. How much was he handling block one?

A. Well, I don't know that I can answer that, except that it was a supposition. I supposed at the time that Mr. Hyde was the owner of the Traver's subdivision.

X 102. A supposition?

A. A supposition.

X 103. Although you had an abstract before you?

A. There was no supposition as to the ownership.

X 104. You had an abstract before you at the time you
299 bought these notes.

A. The Dixon notes.

X 105. Yes, sir.

A. I had looked at an abstract, yes sir; to satisfy myself on the Dixon trust deed.

X 106. And you never looked to see whether Mr. Hyde owned block 1 or not?

A. I didn't; I looked to see if it covered the property, supposing at the time Mr. Hyde owned it. In the manner in which business was transacted by Mr. Hyde I never questioned——

X 107. He never transacted any business or sold any land in block 1, did he?

A. No, sir, not to my knowledge; I don't know what he did do.

X 108. Will you state now that the language you used to Mr. Ayres in reference to the ownership of the two last Dixon notes was that in a business point you owned them; is that what you said?

A. I did, yes sir; that is what I said. I considered myself the legal holder of the notes.

X 109. Didn't you tell him out right that you owned them?

A. No, I don't think I did; I told him I represented them.

X 110. And didn't Mr. Hyde, in his presence and yourself, tell him that he owned block 1?

A. I don't remember that he did; I think the question was not raised as to the ownership of block 1.

X 111. Is it not a fact that you and Mr. Hyde were almost ready to say anything and do anything to get block 2 released and the lien shifted over on to block 1?

A. I don't really like the style in which you put that. I don't think I would have lied to carry a point for Mr. Hyde. I rather think this question I won't answer unless compelled to. I did not propose to lie at that time to save Mr. Hyde's security.

X 112. I will ask you to look at paper, marked "Exhibit K," I think it is, and state whether you ever saw that before.

300 A. I did see it, sir; I signed it.

X 113. Whose handwriting is that in?

A. Mr. Hammonds'.

X 114. Is that your signature?

A. It is.

X 115. In what capacity did you sign it?

A. As legal holder of the notes.

X 116. Was that true?

A. It was in point of business, as I told Mr. Ayres when I signed it.

X 117. Well, you say it is true in point of business; is it true in point of fact?

A. It was in point of fact, as I looked upon the transaction at that time. I had bought the notes and held them. Hammond & Bogue held them for the account of Mr. Richardson.

X 118. You acknowledged that release, did you, at the time?

A. I did.

X 119. You didn't tell Mr. Ayres that you held them on account of Mr. Richardson, did you?

A. I don't know that I told him who I held them for.

X 120. Didn't you tell him that you owned them?

A. Not absolute ownership for my own account, no sir.

X 121. Mr. Bogue, when did you say that Mr. Hyde made business connection with you?

A. It was about—I cannot tell the exact time—it was about the first of March, 1875; about that time Mr. Hyde went into our office; about the first days of March moved into our office, and we went into business together in the spring of 1875; I think along in March—first days of March.

X 122. Did you have cards struck off with your names on them?

A. We did.

X 123. You say that Mr. Hyde is now in bankruptcy. Do you know what his condition was about the 5th of April, 1875?

301 A. I cannot say that I do, but I suppose; I know he was carrying a good deal of real estate at that time, selling but very little.

X 124. Don't you know that at the time this suit was commenced, he didn't really have a hundred dollars worth of equity in block 2?

A. About the time this suit was commenced?

X 125. Yes.

A. I don't know. If I was to judge from the amount that we were loaning him, I consider that he had equity in block 2; I cannot answer that definitely.

X 126. Did you ever examine the title or abstract to block 2 at that time?

A. I cannot say that I did examine it. It was examined at the time the loan was made at first.

X 127. You didn't know then that he had sold and encumbered all of block 2; all his interest in Traver's addition to the full value of his interest at that time.

A. I cannot say that I knew that he had or had not.

X 128. Was Mr. Richardson any relation of yours?

A. No, sir.

X 129. Whereabouts does he live?

A. In Boston or near Boston. He does business in Boston; I think he lives in Boston.

X 130. Are these all the loans you made for him?

A. No, sir; we made other loans for him.

X 131. To what extent?

A. I should say ten to twelve thousand dollars aside from this; it might have been more.

X 132. When did you notify him that you bought these last two Dixon notes?

A. I cannot answer that question; I cannot tell; I think Mr. Hammond can show that business correspondence.

302 X 133. Did you make any other loan to Mr. Hyde on this block 2, Traver's subdivision?

A. Not until after the release from this incumbrance of the Dixon notes.

X 134. The release of the 29th of January, 1875?

A. Not until after that, I think.

X 135. Did you loan Mr. Richardson's money then or your own?

A. In the loans after the release?

X 136. Yes, sir.

A. Not Mr. Richardson's—not our own.

X 137. What did he do with the money that you loaned to him on block 2?

A. I think that a large portion of it, if not all, was paid—refunded to Hammond & Bogue, and paid on these two notes.

X 138. Were you using block 2 for the purpose of getting and saving the original Richardson loan after this release was signed?

A. We were using block 2 to refund the money that was paid out for the Dixon notes.

X 139. And the Dixon notes, you say, were taken in lieu of the original loan that was made to purchase the Hyde notes given to Michael Traver?

A. Yes, sir.

Examined by Mr. J. E. MONROE:

1. When you purchased the two Dixon notes, which were due in four and five years after their date, were they endorsed in blank by John Dixon, payee therein?

A. I don't know that I can answer that question, but I am under the impression—I have not seen the notes for a long time—I cannot say—they were sent to Preston, Kean & Co. for collection by some bank in Cincinnati—whether the Dixon endorsement was blank or not; something had been written by somebody else.

303 2 (q.) They were endorsed at least by Dixon?

A. It is my impression that they were.

3. Whether in blank or special you cannot say?

A. I can identify the notes. The original notes now being presented to me, I find they were endorsed in blank by John Dixon, payee, at the time I bought them at the bank of Preston, Kean & Co.

Adjourned to 10 a. m., Wednesday, March 6, 1878.

10 A. M., MARCH 6, 1878.

Parties met pursuant to adjournment, when the examination of Oswell A. Bogue was continued.

Examined by Mr. H. S. MONROE:

1. How long had you been financial agents to Mr. Richardson prior to the time you loaned for him the $6,000 and [$]4,000?

A. It is my impression that is about the first money received from Mr. Richardson.

2. He sent the money to you to loan for him?

A. Yes, sir; he sent the money to the firm of Hammond & Bogue. I think that was about the first, or the first, transaction that we had with him.

3. You had discretion to invest the money as you thought best?

A. Yes, sir; certainly.

4. I understand by your testimony that you loaned Mr. Hyde this amount of money with the agreement on his part that he would out of the money that you let him have pay off the incumbrance on block 2?

A. Yes, sir, that was the understanding at the time the loan was made.

5. And that Mr. Hyde afterwards sold a portion of this property and paid you the money, and you took that money to buy these Dixon notes?

A. Yes, sir; the money that was paid on the 15th of Jan-

304 uary, which was the first payment towards these notes, came from that sale; that money was passed over to me by Mr. Hyde upon Mr. Hammond's releasing from this Richardson trust deed—from one of those loans Mr. Hammond released the property that Mr. Hyde sold. The money that was received by Mr. Hyde for that part of the property was paid right over to me direct, and that money I paid direct to Preston, Kean & Co.

6. On these notes—Dixon notes?

A. On these notes; at that time that was the first knowledege that I had that Mr. Hyde had not paid off the encumbrance on block 2 as he agreed.

7. Were there two or more payments made to Preston, Kean & Co. on these Dixon notes, or were they all paid for at one time?

A. There were two payments made, one on the 15th and one on the 28th of January.

8. Part of the money advanced to purchase these Dixon notes in the first instance was yours or belonged to your firm, was it not?

A. The first money paid.

9. Part of the money paid to take up the Dixon notes, that is there was not enough.

A. Part of the money belonged to Hammond & Bogue; that went to take up those notes; it was advanced; Mr. Hyde furnished some money; Hammond and Bogue furnished some. It was advanced as being advanced to Mr. Richardson, the whole amounting to $11,500, or something over that; the difference between $12,000 and $11,500 came from Mr. Hyde.

10. Was there not an understanding between you and Mr. Hyde as to how much of this he should advance?

A. Of the entire amount of the Dixon notes?

11. Yes, sir.

A. The understanding was that Mr. Hyde should pay all
305 that was due upon the Dixon notes, except $10,000; he should pay interest, and the balance between $5,000 each on the paper, making $10,000; Mr. Hyde, in other words, was to pay all excess above $10,000, which he did do, and we passed to Mr. Richardson's account these two notes of $5,000 each.

12. There is really $10,000 due on them?

A. Those notes should call for $1,000, not for the amount that they do; it was reduced, principal and interest was paid down to $10,000, and that was given to Mr. Richardson in lieu of the other papers, 6,000 and 4,000, which we considered fully paid by this transaction.

13. You notified Mr. Richardson of what you had done, I suppose, at the time?

A. We notified Mr. Richardson of what we had done; the date that we notified Mr. Richardson I cannot state; Mr. Hammond kept the books and conducted the correspondence; he will be able to tell the date that Richardson was notified, but the matter came to me in a way that did not give us time to correspond with anybody; Mr. Hyde came into my office and said, "I have sold a portion of block 2, and it is necessary for you to buy these two notes in order to make Mr. Richardson's a first lien." I was somewhat surprised to know that Mr. Hyde had not released block 2 as he agreed to.

14. When you notified Mr. Richardson of what you had done, did he assent to the change you had made?

A. He did; his remark was, or his reply was, that it was a matter of which he could not judge—(objected to by Mr. McCoy)—

that he considered the matter in our hands as agents, and wanted us to make him safe; he left it wholly in our hands to take care of.

15. Are you sure, Mr. Bogue, that you did not go to the bank of Preston, Kean & Co. with Mr. Ayers and Mr. Hyde, at the
306 time, or before you and Mr. Ayers executed the release?

A. I have thought of that since I was here before on the direct examination. I am under the impression that Mr. Ayers, Mr. Hyde, and myself, I wont be so sure of Mr. Hyde, but I am under the impression that he was there; we went to the bank, and that there was but one note there, and between that time and the 28th of January the other note was received by the bank, and the release was not made until I had paid for and had both those notes in my possession. I think that was it.

16. The object you and Mr. Hyde had in getting the release of block 2 from the lien of that Dixon trust deed, was to enable Mr. Hyde to make a sale and get the money to pay on these Dixon notes?

A. Yes, sir.

Objected to by Mr. McCoy.

17. Mr. Ayers refused to make the release until both notes were there in the hands of some person with authority to unite with him in the release?

A. He did distinctly; the release was not made until I had the two notes with me in Mr. Ayer's office. I think Mr. Ayers remembers looking at these notes.

Redirect examination by Mr. INGALLS:

1. I understand that the transaction in the purchase of the Dixon notes was, that Mr. Hyde was to pay sufficient money on those notes to reduce the amount of the incumbrance to $10,000, so that Mr. Richardson would have that amount invested in the Dixon incumbrance when it was purchased for him; now you have stated that when the money was paid there was some money which was advanced by Hammond & Bogue; for whom or whose accommodation was that money advanced by Hammond & Bogue, and by
307 whom was it repaid, if any one?

A. It was advanced for the accommodation of Mr. Hyde and repaid by him. I understood that he was to pay enough money to reduce the incumbrance to $10,000; that was the understanding.

Examination by Mr. McCOY:

1. Does not James C. Hyde now owe Hammond & Bogue about the sum of $2,928.

Objected to by Mr. INGALLS, as irrelevant.

A. Mr. Hyde owes the firm of Hammond and Bogue. I do not know the amount, but I should say that he owes something near that. I have not looked at his account for over a year. I don't know the exact amount.

2. Does any portion of that indebtedness grow out of the purchase of these notes or this loan transaction from Mr. Richardson?

A. No, sir.

3. It did not?

A. No, sir.

4. Is it customary for loan agent- who are acting for eastern capitalists to use their own discretion entirely in the investment of securities for their principals?

Objected to by Mr. INGALLS.

A. I will say that I do not know as to what the custom is, but in the matter of Hammond & Bogue's business, I can reply—say that it was the money that we loaned was left to our discretion. I may say in almost every case it was left to our discretion. In very few instances have we been requested to confer with any one in relation to our investments.

5. Is it not the general custom with loan agents in loaning money for capitalists east, to have an application made and sent on to the principals for them to examine before the investment is made?

308 A. I think that is so in the matter of loaning money for corporations, such as insurance companies and savings banks, but where a house like Hammond & Bogue and many others is simply loaning amounts of money all the way from $500 to as many thousands or more, I think it is not.

6. You say your object in getting block 2 released from the Dixon notes was to enable Mr. Hyde to sell block 2 to raise money. Now, was you not aware that when that release was made that the encumbrance was wholly shifted over upon block 1?

A. That was the supposition; that is, as we intended, as far as the security on block two was concerned; we considered it all released, and this Dixon paper took its place.

7. You cannot tell anything about the encumbrances that Mr. Hyde had upon block 2 and block 3. Had he the legal title to block 3 at the time this suit was commenced?

A. I cannot tell exactly how it stood. I know that we made him different loans upon portions of block 2, and the money was used in refunding this money that was loaned him or which was paid over for this Dixon paper.

Examination by Mr. INGALLS:

1. At the time of your purchase of the Dixon encumbrance, what was the comparative value of blocks 1, 2, and 3, in Traver's subdivision?

A. I should say that block 1 was worth nearly as much as blocks 2 and 3.

Examination by Mr. MCCOY:

1. Is there not about as much front on the Ogden Avenue front on block 3, Traver's subdivision, as there is in block 1?

A. No, sir.

2. Had you, up to April, 1875, bought and sold any land

309 at Lawndale?

A. No, sir; I had neither bought nor sold.

3. So that your judgment as to the relative value of block 1 compared with blocks two and three is merely guess work, by examining the map of Traver's subdivision?

A. I cannot state that that is the state of my mind on the subject.

Examination by Mr. INGALLS:

1. In your last answer you mean to say, as I understand, it is not guess work?

A. I do; it is not guess work.

Objected to by Mr. McCoy, as leading.

OSWALD A. BOGUE.

ENOS AYRES, a witness produced, sworn, and examined on behalf of def't, Richardson, testified as follows:

Direct examination by Mr. INGALLS:

1. State how long you have been dealing in real estate in Chicago, Mr. Ayres.

A. About 30 years.

2. State your judgment as to the relative value of blocks 1, 2, and 3, Traver's subdivision, January, 1875.

A. I would answer by saying that block 1 is greatly more valuable than block 2, and also greatly more valuable than block 3; that block 2 is least valuable of the three, decidedly, but I would not say that block 1 was worth as much as 2 and 3.

Mr. McCOY:

I have no questions to ask, but I object to the evidence about comparative value, as being irrelevant.

Examination by Mr. H. S. MONROE:

1. Is not block one worth nearly twice as much as block 2?

310 A. It is worth fully a third more in my opinion; that is all I can say.

HENRY L. HAMMOND, a witness produced, sworn, and examined on behalf of deft., Richardson, testified as follows:

Direct examination by Mr. INGALLS:

1. State your name, age, residence, and occupation?

A. Henry L. Hammond; 63 years old; live at 52 Throop street, in this city; am now in the loan business, collecting.

Q. State whether you were a member of the firm of Hammond and Bogue, financial and loan agents, in 1872, '3, '4, and '5.

A. Yes, sir.

3. State whether during that time you were acting as agents of Charles A. Richardson in investing money for him?

A. We were.

4. State whether you made any investments of money in behalf of Mr. Richardson in securities upon the land now known as

Traver's subdivision; and, if so, state what was the first investment so made, and when.

A. We loaned on block 2, Traver's subdivision, $10,000.

5. When?

A. The notes bear date—two notes bear date the 28th of December, 1872, I think; one note $4,000 and one $6,000.

6. State by whom these notes were made, and to whom payable, and if endorsed, by whom.

A. My recollection is that they were made by James C. Hyde, payable to the order of Michael Traver, and endorsed by him, and made payable to the order of C. A. Richardson, guardian.

7. State what time those notes run.

A. For three years, I think, from their date.

311 8. State whether you made any change in that investment afterward; and, if so, state what change was made, and the circumstances under which it was made.

A. Those notes were exchanged for a couple of notes that were proved to have been a lien upon that land and some other land, and exchanged because we ascertained that the previous incumbrance had not been released, and made these notes a second lien, and to protect Mr. Richardson's interest.

9. When the first investment was made, what was the understanding, if any, in regard to its being then or to be a first incumbrance on block 2?

A. It was to be a first incumbrance on block 2; that was the understanding.

10. After the time of that first investment, when was it first brought to your attention that the first securities had not been made a first lien on the land?

A. I don't know that I can tell exactly the date, but it was a good while after. I should think, as near as I can recollect, that the first intimation I had of it was from Mr. Manning; I don't know certain whether that is correct or not. I should think the first intimation was some time in the fall of 1874; late in the fall; I cannot tell exactly.

11. State the time when this exchange of securities was made, as near as you can.

A. I think in January, 1875.

12. What security did you then take in behalf of Mr. Richardson?

A. Some notes that were a first lien on blocks 1 and 2.

13. To whom were those notes payable?

A. I don't think that I could tell with regard to that, sir, (looking at notes); these two appear to be the notes that we took in exchange.

312 14. Those are what are called the Dickson notes, are they not?

A. Yes, sir; made payable to John Dixon.

15. Mr. Hammond, state what, if any, knowledge you had at the time you made the purchase of these two Dixon notes for Mr. Richardson of any agreements previously made between Henry and

Michael Traver, or between Michael Traver and Mr. Hyde, in regard to the land in this Traver subdivision.

A. I did not know anything about any such agreements.

16. State what, if any, knowledge you had at the time you made said purchase in regard to Henry Traver owning, or claiming to own, any interest in this subdivision.

A. I don't think I knew anything about that, sir; I may say that I don't recollect that I had any knowledge of that matter.

17. State what, if anything, you knew in regard to that portion of the property known as block 2 being released from the lien of this Dixon incumbrance, at or about the time of this purchase.

A. At the time of the purchase of these notes?

18. Yes, sir.

A. I understand that that was released from the first lien at that time.

19. At the time of the purchase?

A. Not that it had been previously, but was at that time.

20. Where did Mr. Richardson resided during the time you were acting as agents for him, and where does he now reside?

A. Boston, Massachusetts.

21. What is the fact in regard to his having had anything to do personally with any of these transactions relative to the Traver subdivision or securities thereon?

A. It was all done here by us.

313 22. None of it by him?

A. None of it by him.

23. State who has been the owner of these two Dixon notes from the time of their purchase by you, and who is now the owner of the same?

A. Mr. Richardson.

Cross examination by Mr. McCoy:

X 1. How long before January 7, 1873, did you have this money from Mr. Richardson to loan?

A. We drew for it on Mr. Richardson January 4, 1873,—had correspondence with him previously and he authorized us to draw upon him for the amount.

X 2. You did not have $10,000 of Mr. Richardson's money on the 28th of December, 1872, in your possession?

A. No, sir; we didn't have it in our possession; we had his authority to make a loan, and authority to draw on him for it when the papers were ready.

X 3. Who did you loan it to for Mr. Richardson?

A. James C. Hyde.

X 4. How did it come that these notes given by Mr. Hyde to Michael Traver, and by him endorsed to Mr. Richardson, were dated on the 28th day of December, 1872?

A. Because that was the contract, that the loan should commence at that time.

X 5. Before you got the money?

A. Before the money was in our hands.

X 6. Before you got the money?

A. We had authority from Mr. Richardson to draw on him for the money when the papers were ready, and the paper, by the contract with Mr. Hyde were to be dated December 28, 1872, and when they were ready according to the instructions of Mr.
314 Richardson, we drew on him for the money.

X 7. So Mr. Hyde paid interest for that money some eight or ten days before he got it, didn't he.

A. Yes, sir.

X 8. Did Mr. Hyde make an arrangement for any other loan for some other purpose than having it secured on Traver's subdivision, or any part thereof, before or about the 28th day of December, 1872, for this money?

A. Not that I know of.

X 9. When Mr. Hyde made his notes payable to Michael Traver, one for $6,000 and another for $4,000, and endorsed by Michael Traver to Mr. Richardson, and secured on block 2, in Traver's subdivision, he represented that that would be a first lien or incumbrance on that property, didn't he?

A. Yes, sir, I think he did.

X 10. You found afterwards, along about the year 1875, that he had deceived you in that respect, didn't you?

A. That the release had not been made which we expected.

X 11. Who did this business on the part of Hammond & Bogue; I mean the arrangement with Mr. Hyde, Mr. Bogue or yourself?

A. I should say Mr. Bogue made most of the arrangements.

X 12. You say the first intimation that you got that the security given to secure the Richardson notes, or the notes made payable to Traver, that they were not a first lien on block 2, came from Mr. Manning?

A. Yes, sir, I think it did.

X 13. Then what did you and Mr. Bogue do when you discovered that?

A. I don't remember that any particular action was taken until in January, 1875.

X 14. What was the action that you and Mr. Bogue took when you discovered that it was not a first lien?

A. We bought two notes of the first lien.

315 X 15. Didn't you send word to Mr. Hyde or notify him of the fact that your Mr. Richardson claim was not a first lien on block 2?

A. I presume that was done, sir.

X 16. I see these notes, one for $6,000 and the other for $4,000, endorsed to Richardson by Michael Traver, are endorsed by Mr. Richardson to Hammond and Bogue; why is that?

A. When we exchanged he returned them to us because of the exchange, endorsed them back to us as agents, to take care of them.

X 17. Are these two notes paid by Mr. Hyde?

A. Yes, sir.

X 18. Who held these notes; who has possession of them?

A. They are in our possession now, excepting that the lawyer has them here in his hands at present.

X 19. If Mr. Hyde has paid for them, why did you hold them?

A. They have been with all the papers retained, as the injunction was placed upon our doing anything else with the land soon after the time when this suit was commenced.

X 20. What did Mr. Hyde pay for them?

A. At the time we made the exchange those were substituted for these.

X 21. On the 29th of January, 1875?

A. In January.

X 22. Why didn't you deliver them up to him when he paid for them?

A. He never called for them, that I remember.

X 23. That was some six or seven weeks before suit was commenced that he paid for them?

A. I don't remember.

X 24. Suit was commenced the 5th of April, 1875, and he paid for them the 29th of January, 1875, and the only reason that
316 you hold them was that he did not call for them; is that the only reason?

A. I don't know, sir, of any other reason.

X 25. What is your usage, Mr. Hammond, in reference to loaning money for eastern customers, about the title to the land, where you loan it on land security, in reference to the title, do you examine the title thoroughly before loaning it?

A. That is our usage; we have not absolutely always done it; when we have supposed ourselves to have sufficient knowledge that it was clear, or was going to be clear, we were not as particular as long ago as that, as we have been since—should be now.

X 26. This was in January, 1873, that you loaned this $10,000 to Mr. Hyde upon block 2, in Traver's subdivision; were you in the habit then of taking loans secured on real estate without examining the title to the real estate?

A. Our firm commenced business in July, 1872; we had ben doing business only about six months at that time, and, as I already stated, we were not as careful then as experience taught us afterwards that we should be; but I supposed that this was a firt lien, or was to be made so by a release of the premises from the first lien.

X 27. Who attended to that branch of your business; that is, examining titles and seeing how the title stood before you loaned on land?

A. Then Mr. Bogue did more of that than I did.

X 28. Don't you know, Mr. Hammond, that Mr. Bogue examined the abstract at the time to this land before he loaned that money for Mr. Richardson to Mr. Hyde?

A. I don't know how thoroughly he examined it.

X 29. Did you examine the title?

A. I don't think I did, sir.

X 30. At that time you say Mr. Bogue managed the examination of titles to land that you were loaning money on?

317 A. Yes, sir.

X 31. Then, of course, you were not likely to be aware of any interest that Henry J. Traver would have in the Traver subdivision?

A. No, sir; I don't know that I should.

X 32. When did you notify Mr. Richardson of the exchange that you made for the Dixon notes?

A. The first letter which I find on file in my copy book explaining that bears date December 8, 1875.

X 33. Pretty near a year after the transaction took place.

A. Yes, sir.

X 34. Were not the Dixon notes purchased at the bank of Preston, Kean & Co. from money belonging to Hammond & Bogue, principally, at the time the purchase was made?

A. There was of money belonging to Hammond & Bogue advanced by Hammond & Bogue for this purchase, according to my books, on the 28 of January, 5,641.87, afterwards paid to us by Mr. Hyde.

X 35. Who advanced the other $5,000?

A. It didn't go through my cash book at all, but I saw currency paid to Mr. Hyde by a gentleman to whom he sold some part of block 2, and was informed that that was applied at that bank for the rest of it; I should suppose about $5,500; I don't know exactly.

X 36. Your books show that Hammond & Bogue, on the 28th of January, 1875, advanced $5,000 for Mr. Richardson, or $5,500.

A. $5,641.87 advanced for the purchase of those notes.

X 37. Dixon notes.

A. Yes, sir.

X 38. Did Mr. Richardson know anything about this advance you was making for him at the time it was made?

A. No, sir.

X 39. When did James C. Hyde become interested in the
318 firm of Hammond & Bogue in the real estate business?

A. There has never been any firm of Hammond & Bogue & Hyde in any business.

X 40. I will ask you the question if Mr. Hyde did not become interested either with you or Mr. Bogue, or with the firm of Hammond & Bogue, in the real estate business in the year 1875?

A. Mr. Hyde and Mr. Bogue did some real estate business under the firm of Bogue & Hyde. Just when it commenced, I don't know that I can now recall.

X 41. You have no data by which you can fix the time that Mr. Bogue and Mr. Hyde became interested together?

A. I presume I could find out, but I cannot recall it now. I cannot tell the time now.

X 42. You may state, Mr. Hammond, whether you made any releases of the deed of trust that Mr. Hyde gave to secure these two notes, $6,000 and $4,000, that went to Mr. Richardson.

A. Yes, sir; I released a part of that block, I should think, in two releases—perhaps more—but not the whole of it.

X 43. Do you know about what time you made those releases?

A. No, sir; I cannot say.

X 44. You may state whether you ever released both trust deeds; that is, the one that secured the note for $6,000 and the one that secured the note for $4,000.

A. I don't now remember whether the whole of either of those is released, but I know that lots in block 2 were released. I remember that nineteen lots were released together, I think, and I think lots 37 to 40, inclusive, were released in another release; but whether either one trust deed is fully released I do not remember—I don't know.

X 45. How did it come that you did not release all the lots in those trust deeds?

319 A. The commencement of this suit, I understood, was an injunction against my doing anything more until this was settled.

X 46. The notes were paid, you say, about the 29 of January, 1875; why were not releases then given to the lots included in both trust deeds when the paper was paid that they secured at that time?

A. We were placing new loans upon parts of those lots, and, as those new loans were placed, there was releases given covering them; some of the loans had not been carried through; that is, the release had not been given before this suit commenced, and the individual- holding those incumbrances have been anxious for the release, that theirs might be the first lien, ever since, but I have not been fully authorized to do it, and have not executed them. I think there are three or four parties, perhaps five, I cannot quite recall, who hold such securities now.

X 47. I am not asking you about the deed of trust given to you to secure other parties; I am asking you about the release of the trust deeds to secure the notes that Mr. Richardson bought that were endorsed by Michael Traver, are they not fully released?

A. No, sir; I think not.

X 48. Now, what interest had other parties in those trust deeds that secured paper that Mr. Richardson got of Michael Traver, endorsed to him?

A. Nothing that I know of; I mean that they had not, that I know of, any interest in those notes; of course they had interest in having their paper a first lien on the land which was given them as security for their money that they loaned.

Redirect examination by Mr. INGALLS:

1. In paying for the Dixon notes, I understand that the 320 transaction, in substance, was that Mr. Hyde made a payment of a certain amount of money, and that Hammond & Bogue advanced out of their funds some $5,500, or over, which, together, made enough to take up the two Dixon notes. Now, if this is the fact, you can answer that?

A. I so understand it.

2. I understand that the money advanced by Hammond & Bogue

was repaid afterwards by Mr. Hyde, and that a sufficient amount was paid to reduce the incumbrance to $10,000.

A. I so understand it; yes, sir.

3. And that the investment on the part of Mr. Richardson was the sum of $10,000 at the time of the purchase?

A. Yes, sir.

4. Has anything been paid on these notes since that time?

A. Not that I am aware of, sir.

Adjourned to 11 a. m. Friday, March 8, 1878.

11 A. M., *March* 8, 1878.

Parties met pursuant to adjournment.

Adjourned to 11 a. m. Monday, March 11, 1878.

HENRY L. HAMMOND.

On Monday, March 11th, 1878, at 11 o'clock a. m., the examination of JAMES C. HYDE was resumed before Henry Waller, Esq., master in chancery.

Cross-examination by Mr. McCOY:

C. Q. State when and where you had a conversation with Henry J. Traver before you made the final arrangement with Michael; state the time particularly.

A. In the office of Snyder & Lee, in the Nixon building, corner of La Salle and Monroe, in January, 1873.

C. Q. What time in January, 1873? State the date, if you can.

A. The day I am unable to state; it was shortly after we
321 had made up this paper to Mr. Hammond with Michael. It must have been about or after the tenth, and on two or three occasions between that and the release obtained in February following.

C. Q. Who delivered the papers of Travers to you that you spoke of that were to be delivered to you—the trade between you and Michael?

A. Michael Traver.

C. Q. Was Henry J. Traver present at the time that Lee endorsed the notes to Dixon?

A. I do not remember the time of the endorsement. It was when he agreed to endorse it.

C. Q. When Lee had agreed to endorse it?

A. Yes, sir.

C. Q. When did Lee endorse them? About what date?

A. That I do not remember.

C. Q. Well, it was before the release was given?

A. Certainly; yes, sir.

C. Q. What did Henry Traver say when you spoke to him about the trade before the release was given in January, 1873?

A. I stated to him the arrangement I had made with Mr. Dickson, and told him that instead of paying him for taking up one note, as we first agreed on, that I paid him more money. I would take up the two notes. I had paid more money than first agreed on

with Mr. Dickson, and I was in hopes to have the release of the other block shortly. He expressed his satisfaction of the transaction.

C. Q. I aint asking you to state what he expressed. I asked you what he said—his language?

A. He said that was all right. I cannot remember the rest of it.

C. Q. You stated you would attach to this your deposition a list of the lots that you owned or controlled at the time this suit was brought. I will ask you to look at the memorandum now
322 handed you, and state whether that is the list you want to attach? (Handing same to witness.)

A. Yes, sir.

C. Q. They were made out by you, are they?

A. Yes, sir.

C. Q. What does that list show; those three papers?

A. These show the lots in block 2 that was owned or controlled by me, together with the encumbrances on them at the time, aside from the encumbrance on them at the time, not counting the Dickson or the $6,000 or the $4,000 notes that you asked for.

C. Q. That was paid, as I understand you.

A. Certainly.

C. Q. Then it was released, wasn't it, as to block 2?

A. Some lots were not released.

C. Q. Wasn't the whole of block 2 released from the Dickson notes?

A. Yes, sir; but not from the Hammond trust deed notes.

C. Q. I am not talking about the Hammond notes; then the Dickson notes, at the time the suit commenced, were not a lien on any of these lots in that memorandum?

A. No, sir.

By Mr. McCoy:

You may attach those papers, and the master may mark them Exhibit "L."

C. Q. Does this Exhibit "L" show all the encumbrances that were put on these lots, or were on these lots at the time the suit was commenced?

A. I think it does, as near as I can find out from my books.

C. Q. I understood you to testify the other day that the two notes, one of them $6,000 and the other $4,000, that you gave to Michael Traver, and Michael Traver endorsed to Richardson, were paid?

A. Yes, sir.

323 C. Q. What time were they paid?

A. In January, 1875.

C. Q. January, 1875?

A. Yes, sir.

C. Q. So that there is no indebtedness relative to these notes that you have to satisfy at all?

A. No, sir; no.

C. Q. You have filed a petition in bankruptcy, haven't you?

A. I have.

C. Q. When?

A. In June last.

C. Q. June, 1877?

A. Yes, sir.

C. Q. Then, if these Richardson notes, one for $6,000 and the other for $4,000, were paid, constituted no indebtedness against you, why did you file them in your schedule as an indebtedness of $10,000 in favor of C. A. Richardson to your petition in bankruptcy, filed by you in June last?

A. I do not think I put them in my bankruptcy; the $10,000 was on the Traver paper.

C. Q. Are you as certain of that as you are of anything else?

A. I am.

C. Q. Who made out your schedule to your bankruptcy petition?

A. Gardner & Schuyler.

C. Q. I mean who did the figuring; who furnished the list of indebtedness?

A. I did.

C. Q. You know who wrote the schedule?

A. Their clerk.

C. Q. Isn't it in your handwriting?

A. No, sir.

C. Q. Well, how did they find out that you had given two notes, one for $4,000 and the other for $6,000, on the 28th day of
324 day of December, 1872, so as to put it into your schedule as part of your indebtedness?

A. What they found was through me.

C. Q. Then you must have furnished—

A. I furnished it.

C. Q. Then you did furnish and swear that C. A. Richardson was your creditor to the amount of $10,000 when you filed your petition in bankruptcy, in June, 1877?

A. I did.

C. Q. On the $6,000 and the $4,000 note?

A. I don't know about that. The schedule I made for them I made some five months before I went into bankruptcy, and it was delayed for filing. Whether I altered it or not, I do not know.

C. Q. Those two notes were then paid, were they not?

A. They were paid at the time I gave them my schedule to copy.

C. Q. They were paid when you made it out?

A. When I first gave them my papers to copy it was in the winter, before this arrangement and before that was paid.

C. Q. You have just sworn that the two notes, one for $6,000 and the other for $4,000, given on the 28th day of December, 1872, to C. A. Richardson, were paid in January, 1875. You have sworn to that, have you?

A. Yes, sir.

C. Q. Now, I ask you again, why you swear in your bankruptcy petition, that you owed these notes on the 13th day of June, 1877?

A. I don't know.

C. Q. Didn't you know you was filing a fraudulent debt at that time?

(Objected to.)

A. No, sir.

C. Q. On the next page in your schedule, didn't you file another $10,000 of indebtedness to C. A. Richardson on the last two Dickson notes, secured on block 1, in Traver's addition?

A. I did.

325 C. Q. How did you come to get both in if the first ones were paid?

A. I owed but $10,000—the suit of Travers *vs.* Travers; to set aside this note on this property, it made it undecided in my mind which ten I should be held accountable for, or the whole.

C. Q. That is your explanation, then?

A. Yes, sir.

C. Q. That you didn't know which you would be held accountable for?

A. No, sir.

C. Q. Didn't you take up these notes given to Mike Travers for $6,000 and $4,000?

A. I had paid up $10,000.

C. Q. They were marked paid?

A. There were not marked paid, but a release was given for part of the block.

C. Q. Didn't you swear they were paid?

A. Yes, sir.

C. Q. How did you swear you owed them to Richardson when you made your schedule?

A. Well, I was hedged on the other hand, and it was undecided in my mind which way this suit was going to make me accountable for. I would have to pay $10,000 to Hammond & Bogue for the Richardson paper, whether it was on one or the other.

C. Q. That is, you got $20,000 indebtedness to Richardson here when you knew that the first $10,000 was paid; explain that.

A. I hadn't the release of all the lots which your suit prevented me from getting the lots, and if I hadn't the release for the other lots my notes would have been held even without a security. The notes were paid. I had paid the notes. I paid $10,000, but your suit mixed me up.

C. Q. I will ask you, sir, if it is not a fact that Mr. Hammond released the lots that were given to secure the $6,000 note and the $4,000 note on the 23 day of January, 1875?

A. $6,000 and $4,000?

C. Q. Yes, sir; the property.

A. No.

C. Q. You swear that is true, do you?

A. Yes, sir; the $6,000 and $4,000. He released some lots out from under it.

326 C. Q. Document 10,991, in the recorders office, will show

what the release was. You may answer whether they released those lots or not.

A. I don't know anything about that document particularly; I know the lots are not released to this day.

C. Q. If the notes were paid and the lots not released, would that make any indebtedness to you?

A. Make an indebtedness? It would make my indebtedness for January or during February.

C. Q. I will ask you whether there is not another indebtedness upon lots 40 to 48, in block 2, Traver's subdivision, besides what you have noted in Exhibit "L."?

A. I think not.

C. Q. Didn't you or Weidinger for you, March 1, 1875, make a deed of trust to secure your note to Edward S. Dryer, for $1,700, on lots 40 to 48, in block 2?

A. I don't think we did.

C. Q. Don't you know you filed that?

A. $700 of it cancelled the other, the Hammond paper.

C. Q. What cancelled the Hammond paper?

A. There was another $1,000. There was $2,000 to the Hastings, and there was another $1,000, and on that paper there was $700 paid, which is this Dyer note.

C. Q. This is a different deed of trust dated March 1, 1875—the Hastings paper was dated February 1, 1875?

A. I made no deed of trust to Dryer.

C. Q. Didn't you so schedule in your bankruptcy proceedings?

A. He held the other note as collateral security for $700. It is that I owed him. That's all, sir.

C. Q. Wasn't there a judgment obtained against you for some wheres near $4,297 in favor of Baldwin, Walker & Co?

A. Yes, sir.

C. Q. Was there any deed of trust given on any of these lots to secure that judgment?

A. There was a deed of trust given on these lots sometime in the early part of 1875, together with other property as collate-
327 rals they then had in their hand, but judgment was entered up, and most of that has been satisfied with other parties, so that this, if you would have permitted it, would have been released at any time. I did not count that an incumbrance on this property.

C. Q. That was made an incumbrance of lots 20 to 29, in block 2, Traver's subdivision, inclusive, wasn't it?

A. Yes, sir.

C. Q. Which has never been released?

A. No, sir. It should be.

C. Q. Didn't you schedule that as an indebtedness—that $4,297—in your schedule?

A. I did, as secured indebtedness. I did not schedule it as an encumbrance on this property, though.

C. Q. Then it was, and should be released?

A. It has been paid since that time.

C. Q. Since you scheduled it?

A. No; there were collaterals they sold as nearly paid the debt.

C. Q. When was it nearly paid—the debt?

A. Since the time he obtained the judgment.

C. Q. I want to know when the debt was nearly paid?

A. That is nearly paid now.

C. Q. What time?

A. My schedule there states what balance there was at that time, and they have sold some collaterals since.

C. Q. Does your schedule state any balance at all in the bankrupt court?

A. I think it does. It enters the Hammond note. *You* states what has been paid on it up to that time.

By Mr. McCoy. I will produce a certified copy of your schedule and attach it.

C. Q. On lots 39 to 43, in block 2, didn't you give a deed of trust in favor of the Theological Seminary, on the west side, on those lots?

A. No, sir.

C. Q. Why did you schedule them?

A. That's in Traver's subdivision, in section 8.

328 C. Q. Why did you schedule them for?

A. It's in Traver's subdivision, section 8, down by the stockyards.

C. Q. We'll see whether your schedule so states it or not. Didn't you give a deed of trust upon lots 20, 22, 23, and 24, in block 1, of Traver's subdivision, in favor of Elizabeth E. Hill, to secure $1,800?

A. I did. At the stockyards; not this property; it's another subdivision entirely.

C. Q. Did you give a deed of trust to Aaron M. Diederich on lots 37, 38, and 39, in block 3, to secure $2,000?

A. I did.

C. Q. Didn't you give a trust deed, on March 11, 1875, on lots 20, 21, 22, and 23, in block 2, to Marcus A. Preston, to secure a note of $1,000 to Marcus A. Preston?

A. I so did; and it is mentioned in my schedule.

C. Q. Did you give a deed of trust to M. Weidinger to secure M. Weidinger $1,300, incumbrance on lots 45, 46, 47, and 48, in block 2, Traver's subdivision?

A. There is no such trust deed on record, that I know of, except one. Allow me to say the only Weidinger incumbrance on this is now held by Dryer, which is stated in there as about $600.

C. Q. Didn't you give a deed of trust to secure him again in $170?

A. No, sir, not a deed of trust.

C. Q. What did you give him?

A. Simply my note.

C. Q. Didn't you convey to Weidinger, of these lots, absolutely, with warrantee deed, lots 40, 42, 43, 44, and 45?

A. I did, as a security.

C. Q. A warranty deed?

A. Yes, sir.

C. Q. Who was the trustee?

A. There was no trustee; his father was entitled to be the trustee. This was conveyed to prevent judgment coming against me, and simply held for what I owed him.

C. Q. What is the consideration in the deed?

A. I don't know, sir.

C. Q. Didn't you convey lots 30 to 32, inclusive, in block
329 2, in trust for Diederich?

A. I have so stated in my schedule.

C. Q. Wasn't that sold out by John Borden as trustee?

A. I do not know, sir. My impression it was, some time last year. Mr. McCoy agreed to take an abstract or memorandum from the records, they would agree upon, from the time this division was made down to the time suit was commenced, and present it, to show the incumbrances, which was agreed to by Mr. Ingalls.

Redirect examination by Mr. INGALLS.

Q. In your direct examination you spoke of its being a part of the agreement or understanding with the Travers that you were to have charge or control of the entire subdivision. On cross-examination you stated, in answer to some particular cross-interrogatory, that that part of the subdivision that you were to have charge of was blocks Nos. 2 and 3; will you explain now more distinctly what you meant by having charge or control of the whole subdivision?

A. I was to have charge of the whole subdivision so far as the encumbrances and management of the same was concerned.

C. Q. What incumbrances did you refer to?

A. The Dickson incumbrance and my own incumbrances, together with the securities that were turned over to me at that time, and also to carry out the contracts which the Travers had made with other parties. But to sell only blocks 2 and that portion of block 3 that came to me or through others to me. In other words, I should not sell block 1, and eight lots in block 3, and had control of the entire subdivision aside from that.

Q. What is your recollection with respect to your schedule in bankruptcy, as regards listing two sums of $10,000 each, as being an indebtedness to Richardson?

A. That was done more by attornies' advice than otherwise, as they stated that it was as yet undecided who should receive,
330 on which notes the $10,000 should be paid.

Q. Well, your liability, as I understand, on the Dixon notes was by reason of your name being put on the back of them?

A. Yes, sir; and it was all scheduled as secured indebtedness.

Q. At the time you made your schedules, these two notes first given to Richardson, that were endorsed by Michael Traver, although they had been in the transaction actually paid, still remained, I understand, in Mr. Hammond's hands.

A. Yes, sir; the notes were dead so far as payment was concerned.

Q. They had been suffered to remain in *statu quo;* the matter had been allowed to rest just as it then was since the time that this bill was filed by Mr. Traver, is that so?

A. Yes, sir.

Q. Then, I understand, under this state of facts, you were advised by the attornies who drew your papers, that it would be proper to list both of those as debts?

A. They took the list that I made, before the notes were actually paid, and they didn't change it; they said let that be.

Q. You had made out a list?

A. I had made out a list some five months before that.

Q. Before January, 1875?

A. Yes, sir.

Q. Of your obligations?

A. Of my obligations.

Q. As a matter of fact all the liability that you consider you are under is on your endorsement or guarantee on the back of the two remaining Richardson notes?

A. $10,000; yes, sir.

Re-cross examination by Mr. McCoy:

C. Q. You admit now that you filed an indebtedness of a $6,000 note and a $4,000 note to Richardson, in your schedule in bankruptcy?

A. I admit that it is in the schedule; yes, sir.

C. Q. Now, I understand you to say in answer to a question of Mr. Ingalls, that you made out a list of these notes five
331 months before; when?

A. I made out a list of my entire indebtedness in December, 1876, so as to bring it up to what I owed on the first day of January, 1877.

C. Q. In December, 1876, then, you made out a list of all your indebtedness?

A. What I owed, up as near as I could tell, to first of January, 1877.

C. Q. What did you do with that list?

A. That I showed to Gardner & Schuyler, what I owed, and I was in trouble considerably then about my Glen Flora Hotel property, and they were driving me very hard, and I showed it to them.

C. Q. And that is the way you account for the first indebtedness, the $6,000 and the $4,000 notes to Richardson being in the schedule, is it?

A. Yes, sir.

C. Q. This list you say was made out in December, 1876?

A. Yes.

C. Q. Now, at that time I understood you to say, and understood Mr. Hammond to swear, and Mr. Bogue, that these two notes for $6,000 and the other for $4,000 had been paid in January, 1875?

A. Yes, sir; they had been paid in 1875.

C. Q. Then it could not be an indebtedness that you owed when you made out that list in 1876, could it?

A. I didn't know which I would be held on; I had to pay Richardson $10,000; whether I had to pay Dickson $10,000 or not, that was another thing.

C. Q. But this you had paid Richardson?

A. I hadn't the papers then in my possession.

C. Q. Now you say that this thing was done under the advice of your attorneys?

A. Yes, sir.

C. Q. That they said they were not certain which notes you would be held on; which one of the attornies advised you that way, Gardner or Schuyler?

A. I referred that, I guess, to Gardner.

C. Q. Where did he advise you?

A. It was in his office; all my conversations were in his office.

332 C. Q. Your petition was filed on the 13th of June, 1877; how long before that was it done, was this advice given?

A. May have been sixty days previous.

C. Q. Now, you say that although the notes had been paid more than a year before, fully paid by you, yet Mr. Gardner advised you he did not know, but what you would have to pay them over again, or something to that effect; is that so?

A. I do not know as I gave him the whole particulars of the case. I simply gave him the schedule that I had already made there, with two sets of notes in, and I told him we had a suit about that, whether it was going to set one of these aside, and if that was aside, the other man would want his money.

C. Q. And you filed it without any explanation or without any reservation whatever, as an indebtedness, I mean of $6,000 and $4,000 notes, as an indebtedness of Richardson's against you—filed it in your schedule in bankruptcy?

A. We did not take it out; he made out his schedule from that list we had in.

Redirect examined by Mr. INGALLS:

Q. You spoke of your having made a list of your indebtedness sometime before these notes were paid in January, 1875, and you afterwards referred to a list which you made in December, 1876. Now, were there two lists made, or how is it in regard to these different times you speak of as having prepared a list?

A. The list that I took to Gardner was the list prepared in 1876; I copied that.

Q. Then what do you refer to when you speak of having made out a list before these notes were paid in January, 1875?

A. I copied that from the list I had of the whole incumbrance in relation to this Traver matter in the subdivision.

333 Q. Had you been in the habit of keeping a memorandum of these different amounts of indebtedness by you?

A. It was my habit on the first of January of each year to put

down relatively what I considered my obligations were at that time. There was always so many different changes in real estate matters. Very often we found ourselves liable for some outside matters with land coming back that we didn't know of before, and it was necessary to revise each year.

Q. In your answer to one of my questions, you stated that you had prepared or made out a list prior to the time when these notes were paid in January, 1875, and then afterwards you spoke of a list of indebtedness that you made out in December, 1876. I want you to explain when the first list was made?

A. Well, the only list that I ever made out expecting to ever use for bankruptcy, or to answer threatnings or creditor's bills, was the one prepared in 1876.

Q. What list then had been made previously or used in preparing *in preparing* that one made in 1876?

A. A list that I had on landed indebtedness only.

Q. Were these Richardson notes of $6,000 and $4,000 in this list which you took that from?

A. Yes, sir; together with all the encumbrances that I could remember on real estate.

Recross-examination by Mr. McCoy:

C. Q. You read over your schedule to your bankruptcy petition before you swore to it, didn't you?

A. Not after he prepared it. I did sometime previous to putting it through. It laid after we had prepared it some sixty days before I filed it.

C. Q. You swore by the ever-living God that that was true, didn't you; that petition and schedule?

(Objected to.)

334 A. Best of my knowledge and belief.

C. Q. Was it true—was that schedule true?

A. It was true to the best of my knowledge and belief.

JAMES C. HYDE.

J. L. Lee, a witness introduced on behalf of the deft., Richardson, being first duly sworn, testified as follows, on March 11th, 1878.

Examined by Mr. Ingalls:

Q. State your name, residence, and occupation?

A. J. L. Lee; real estate; fifty-seven.

Q. Mr. Lee, are you acquainted with Michael Traver and Henry J. Traver?

A. Yes, sir.

Q. How long have you been acquainted with them?

A. Oh, I have known Michael Traver, I should think, ten or twelve years; Mr. Henry Traver I have not known so long ago as that; I think six or eight years since I first knew him.

Q. I will ask you if you were engaged in the real estate business

in Chicago in January, 1873, and previous to that, under the firm name of Snyder & Lee?

A. Yes, sir.

Q. Look at these two notes called the Dixon notes, Mr. Lee, and state who put the endorsement of Snyder & Lee on these two notes?

A. I did; I wrote that endorsement.

Q. Mr. Lee, state what was the fact at or about the time that endorsement was made by you of Mr. Michael Traver and Mr. Henry J. Traver being in your office frequently; state what was the fact in regard to that.

A. Mr. Michael Traver was there very frequently; Mr. Henry J. Traver was there occasionally; I see both of them there about those days.

Q. Where was Mr. Hyde then occupied?

A. He was our book-keeper.

Q. Occupying a desk in your office?

A. Yes, sir.

Q. I will ask you what is the fact in regard to whether
335 you had at that time, and before and after that, seen Mr. Hyde and Michael Traver and Henry Traver in conferences; and if you have, state during about what time, and how often, you have observed them in such conferences.

A. Mr. Michael Traver was there very frequently, consulting with Mr. Hyde in regard to this matter, but Mr. Henry Traver I do not remember was there more than once or twice. That is the best of my recollection.

Q. You do recollect that Mr. Henry Traver was there on one or two occasions?

A. Yes, sir.

Cross-examination by Mr. McCoy:

None.

By Mr. Ingalls:

Q. State at whose request you made the endorsement of Snyder & Lee upon these notes, (and showing them to the witness.)

A. J. C. Hyde.

Adjourned to 11 a. m., Saturday, March 16, 1878.

March 16—11 a. m.

Parties met pursuant to adjournment, and adjourned to 2 p. m., March 20th, 1878.

March 20th, 1878—2 p. m.

Parties met pursuant to adjournment.

Michael W. Manning, a witness produced, sworn and examined on the part of def't, Richardson, testified as follows:

Direct examination by Mr. Ingalls:

1. Just state your name, age, residence, and occupation.

A. Michael W. Manning; I am of lawful age; residence, Chicago; I am engaged in settling other people's business.

2. State whether you are acquainted with Michael Traver, Henry Traver, and James C. Hyde.

A. Well, I cannot say that I am acquainted with Henry more than that I have seen him. I am with Michael, and James C. Hyde.

3. You are acquainted with them?

A. Yes, sir.

4. State whether late in the fall, or in the month of Decem-
336 ber, 1872, you heard any conversation between James C. Hyde and Michael Traver, in reference to Traver's subdivision, or in reference to notes or an incumbrance held by Dixon; and, if so, state the substance of what conversation you heard, and the time, as near as you can.

A. I cannot say; I suppose it was in—about 1872—December; I don't know exactly now, I have nothing to remember by. I suppose it was that year when this occurrence took place. Mr. Traver was back and forth there at Hyde's office, where he kept his office at that time, and I was also there, interested with Mr. Hyde in some transactions, and Mr. Hyde acquainted me something about this matter, asked my advice about it, and I heard him and Mr. Traver talking about the transfer of the property, and why they were making the deal.

5. State the substance of what was said, as near as you can recollect.

A. Mr. Traver was in trouble at the time about these notes, and Mr. Dixon, as I understood it, was not very friendly to Mr. Traver, and was going to foreclose on him, and he thought that Mr. Hyde could manage Dixon by going to see him and stop the foreclosure. That is as near as I can remember. I was not particularly interested, and I know Mr. Hyde did go to Cincinnati and succeeded in making this deal in some way.

6. Did you at that time hear Henry J. Traver make any request of Mr. Hyde, in regard to going to Cincinnati; if so, what?

(Objected to by Mr. McCoy, as leading.)

A. I don't think I knew Henry Traver at that time.

7. I mean Michael Traver; state whether you heard Michael Traver say, in substance, to Mr. Hyde that he wanted him to go to Cincinnati and see Mr. Dixon and get him to extend the loan.

337 Objected to by Mr. McCoy, as leading:

A. I cannot say it was exactly in that way; but Mr. Traver was very anxious at that time.

8. State what he said.

A. Well, I say that he said he was very anxious to have this thing arranged with Mr. Dixon, and whether through Mr. Hyde's buying the property, assuming the obligation himself, or whether Mr. Traver wanted him to intercede with Mr. Dixon I cannot say, but my impression is that Mr. Traver abandoned the idea that Mr. Dixon would extend the notes as long as he owned the property.

9. As long as who owned the property?

A. Mr. Traver.

10. State whether you heard Michael Traver say to Mr. Hyde in substance that he, Michael, could not get Mr. Dixon to extend the notes, but thought that Mr. Hyde could do so:

Objected to by Mr. McCoy, as leading.

A. I think he did.

No cross-examination:

[All the testimony of the following witnesses objected to by Mr. Ingalls:]

JOSIAH S. WOLFE, a witness, produced, sworn, and examined on the part of complainant, testified as follows:

Direct examination by Mr. McCOY:

1. State your name, age, occupation, and residence.

A. Age, 41; name, Josiah S. Wolfe; residence, 406 Hermitage avenue; occupation, real estate and brokerage, general brokerage.

2. Where did you reside, Mr. Wolfe, the latter part of 1874 and beginning of the year 1875?

A. I resided at 326 Fullerton Ave., Chicago.

338 3. What was your business there?

A. Real estate.

4. Were you acquainted at that time with the parties to this suit; I mean Mr. Michael Traver, Oswell A. Bogue, and James C. Hyde?

A. I knew Mr. M. Traver personally, Mr. Hyde through introduction to him by Mr. Traver, and Mr. Bogue from having answered some advertisements and called on him at different times.

5. Had you any acquaintance with Henry J. Traver at that time?

A. No, sir; I did not know him.

6. Did you know where Traver's subdivision, near Lawndale or in Lawndale, was or is?

A. Yes, sir.

7. Were you acquainted with it at that time?

A. Yes, sir.

8. State whether you endeavored at that time to trade for any lots of that subdivision or not; if so, about what time?

A. I could relate the circumstances that called me there.

9. Well, you can go on and relate the circumstances, and if you had any conversation with Mr. Hyde or Bogue on the subject, you may state what it is, and make it as short as you can.

Objected to by Mr. Ingalls.

A. I had occasion to use some Pacific Hotel stock, and made an enquiry of Mr. M. Traver; he told me that a gentleman of the name of Hyde had some $20,000 or more of that stock, and he went with me to Mr. Hyde's place, and he was not in his office; they said he was over on Dearborn street; we went there, and Mr.

Traver introduced me to Mr. Hyde; that was my first acquaintance with him.

339 10. With Mr. Hyde?

Objected to.

A. Yes, sir.

11. Go on and state your acquaintance with them and their conversation, so far as it relates to the subdivision of Traver spoken of.

Objected to.

A. In speaking, among other pieces, he mentioned this piece of property at Lawndale, and asked me if I found any customer that he would like to trade for a good farm or other good property, but preferred a good farm.

12. To trade what?

A. Property at Lawndale.

13. In Traver's subdivision?

A. Yes, sir; he mentioned that, among other property that he had; he didn't specify, call my attention to that any more than other property that he had control of or owned. A short time after that I was at Crown Point, and Mr. Hughes, residing at that place, wanted to trade a farm near Momence, Illinois, and wanted to get a nice situation in or about the city, favorable located as near some prominent thoroughfare as could be got, and on my return, probably a week or ten days after that, I went to call on Mr. Hyde, and they said he was over on Dearborn street, and I went over to that office; he was not there. Mr. Bogue was in the office, and asked me if he could do anything for me, and I told him I was looking for some property that Mr. Hyde owned in Lawndale. He stepped to the map and showed me, and pointed out the property, and I told him that I wanted property on the drive, and he said that belonged to Mr. Traver. I asked him if it was Mr. Traver. He said no, it was his brother, living at Wheaton.

340 14. When you speak of the drive what drive do you mean?

(Objected to.)

A. I mean Ogden avenue drive.

Mr. MONROE. I move to exclude the last two answers of witness, on the ground that no proper foundation has been laid for introducing a statement made by Mr. Bogue.

15. State whether or not you designated any portion of Traver's subdivision on the drive to Mr. Bogue.

(Objected to by all defendants.)

A. I pointed out a portion that fronted on the driveway; if I remember correctly it was in block 1.

16. What did you point it out on?

A. The map that hung on the south side of the room.

17. When you first became acquainted with Mr. Hyde; by introduction from Mr. Traver, where was his office at that time?

A. I think it was with Snyder & Lee, in the Nixon building?

18. In the Nixon building?

A. I think so.

19. At this time when you called to see him where did you call. first?

A. At Snyder & Lee's.

20. Then where did you go?

A. Over to Bogue's.

21. How did you come to go over to Bogue's?

A. They said they thought I would find him there.

22. And when you went over to Bogue's you didn't find Mr. Hyde in?

A. The first time when I went there I found him in.

23. I mean when you had the conversation?

A. No, sir; I didn't find him in.

24. Was there anything said by you at the time to Mr.
341 Bogue how much you wanted to trade for, whethe a lot or more?

Objected to by all defendants.

A. I told him I wanted some ten or twelve thousand dollars worth.

25. Of what?

A. Of property.

26. Located where?

A. On a drive.

Objected to by all defendants.

27. Look at exhibit now shown you, being "Exhibit B" to Henry J. Traver's deposition, and state whereabouts on this exhibit that you pointed out to Mr. Bogue the lots or property that you would desire.

Objected to by Mr. Ingalls.

A. This portion up here [indicating].

28. Please name the lots and the blocks it is in?

A. It is in block 1, fronting on the drive.

29. When you asked him for that portion of block 1 immediately fronting on the drive, you may state what Bogue said.

Objected to by all defendants.

A. He said Mr. Hyde did not own that property.

30. Did he say anything further?

A. Yes, sir; said it was owned by Mr. Traver's brother, and I asked if it was M. Traver, and he said no, it was his brother who resided at Wheaton.

31. Now, Mr. Wolfe, will you please state what time this was, as near as you can?

A. I think it was the beginning of 1875, in January. I was down at Crown Point about the latter part of December, 1874, and

I think it was some ten days after I came home, probably a week or ten days.

32. Did you pursue that property any further, immediately
342 fronting on Ogden avenue? Did you go to any person afterwards?

A. Yes, sir.

33. Who to?

A. I went to Mr. Coffman's office, where the Travers stopped, 162 or 164 Washington street, to learn if he would dispose of this property and take a farm.

Cross examination by Mr. INGALLS:

X 1. Where did you live at the time of this transaction that you have testified about?

A. I lived on Fullerton avenue, in this city.

X 2. What was your business then?

A. Real estate and building.

X 3. Was you then acquainted with Mr. Bogue?

A. I had been in his office some half dozen times or more.

X 4. Had you done any business with him before that time?

A. We never got any transaction through. We were in a deal for a piece of property called a fruit farm, across over Lake Michigan.

X 5. Whose property was that that you mentioned last?

A. Property that I owned myself at that time.

X 6. You were negotiating with Mr. Bogue to trade with regard to that property that you owned yourself?

A. Yes, sir; he answered an advertisement of mine, and I went to see him.

X 7. How long had you been negotiating about that?

A. Probably two or three weeks.

X 8. When did you begin that negotiation?

A. A short time prior to this.

X 9. What time, I mean, and what month, and so on.

A. I think it was some two months prior to that.

343 X 10. Give me the month, and day of the month, as near as you can fix it, when you began the negotiations with Mr. Bogue about the farm?

A. I think it was about two months previous to this.

X 11. That is not what I asked you; I asked you to give me the day of the month, as near as you can fix it, and the month that you started on that negotiation, without any reference to the other transaction?

A. I think this occurred in the early part of October.

X 12. What year?

A. 1874.

X 13. Fix the day in October, as near as you are able to?

A. I could not, sir.

X 14. Where did you see Mr. Bogue first about this farm?

A. He first came to my office at 199 Madison street.

X 14. That was early in October, 1874?

A. That is my remembrance of it.

X 15. Is there any certainty about that?

A. I have nothing in my mind to fix it within a fixed period, as to confine it to a day or two, or a portion of the month even; I had so many transactions occurring out of that advertising that nothing is in my mind to fix it definitely.

X 16. Can you state positively that it was in the month of October?

A. I say that my remembrance fixes it in that time.

X 17. I ask you whether you are positive it was in October; whether you may be mistaken about the time?

A. I am as positive of it as I would be of anything that I had not a fixed certainty in my mind, to my best recollection.

X 18. How long an interview did you have with Mr. Bogue on that occasion?

344 A. Very short; made me take a description of the property, and I gave him a description of the property I had, price, etc.

X 19. Did he give you a description in writing?

A. Yes, sir.

X 20. Had you considered that negotiation before the time when you say you had the talk with Mr. Bogue about Traver's subdivision?

A. Yes, sir; I didn't look favorably upon the property offered.

X 21. I am not asking for any kind of reasons; did you have occasion to see Mr. Bogue again after that negotiation closed—before the time you talked about Traver's subdivision?

A. Not with regard to that particular piece of property.

X 22. Well, I mean with regard to any matter.

A. I think I had.

X 23. About what?

A. Relative to a house.

X 24. State what house it was.

A. I could not state what house it was, but it is a house on the south side.

X 25. What lot and block was it on?

A. I say I could not state as to its particularities.

X 26 What did Mr. Bogue say about the house?

A. He simply had this house at a certain price for a certain class of property.

Objected to by Mr. McCoy.

X 27. What class of property was it?

A. It was a residence property.

X 28. What class of property was it that he advertised it for?

A. Advertised it for a farm for Iowa lands.

X 29. Did you go to him with a view of trading for it?

A. Yes, sir; I went to get the number of the property.

X 30. You got the number of it, did you?

345 A. Yes, sir.

X 31. Whose property was it?

A. I presume Mr. Bogue is like every other real estate man; he never gives the names of the owners; I never do.

X 32. He never gave you the name of the owner of any property?

A. Certainly not, sir.

X 33. When was your attention first directed to any talk you had with Mr. Bogue about Traver's subdivision, in view of giving testimony in this suit?

A. I was called upon some two weeks since.

X 34. Who called on you about it?

A. Mr. M. Traver.

X 35. Did Michael Traver tell you about this suit; what the nature of it was?

A. No, sir.

X 36. Did he tell you the time when a release was made of any part of Traver's subdivision from any mortgage?

A. No, sir.

X 37. There has been nothing to recall or direct your attention to this alleged conversation that you say you had with Mr. Bogue, until the time when Michael Traver called to see you about it, about two weeks ago?

A. No, sir; I never knew there was a suit pending, or anything of the kind.

X 38. Well, can you undertake to swear positively as to what month this conversation took place in?

A. Which conversation?

X 39. The conversation that you say you had with Mr. Bogue.

A. I could not fix it within a week.

X 40. Can you be positive whether this conversation took place in January or February?

A. Yes, sir.

X 41. By what means?

346 A. Growing out of the fact of my visit to Crown Point and Mr. Hughes' desire to exchange his farm.

X 42. When were you at Crown Point?

A. I was at Crown Point about ten days or such a matter before the holidays of 1874.

X 43. How long were you there?

A. One day and one night.

X 44. Have you any memorandum to fix the date that you were there?

A. I think I have.

X 45. What is it?

A. The real estate transaction with Mr. Hughes.

X 46. Have you referred to that in giving this testimony?

A. I have not.

X 47. I understand you to say that this was the property that you proposed to trade off that you got charge of while you were down in Indiana; is that so?

A. Yes, sir.

X 48. Did you finally succeed in trading of- that property?

A. No, sir.

X 49. How long did you have charge of it?

A. For several months.

X 50. Up to about what time?

A. I think it was along in some time in the May following.

X 51. How long do you say it was after you were at Crown Point that you had this talk with Mr. Bogue?

A. I think a week or ten days.

X 52. How do you fix that time?

A. I fix it from the fact of my visit there, which occurred just before the holidays.

X 53. Have you any means of stating positively how long a time it was after you returned from Crown Point?

A. My best memory is that it was less than a week, but
347 it may have been ten days.

X 54. Did you make any other negotiations before you saw Mr. Bogue about the property?

A. The farm?

X 55. Yes, sir.

A. Yes, sir.

X 56. How many negotiations did you commence or attempt to make before you saw Mr. Bogue?

A. Some two or three.

X 57. Who were those negotiations made with?

A. One was made with Mr. Finley, I remember.

X 58. Who were the others?

A. I think the other was made with Mr. Whipple.

X 59. Who were the others?

A. I don't now recollect; I mentioned it to several real estate parties.

X 60. Can you give the dates when you made those several negotiations?

A. They were not negotiations; they were simply descriptions of the property.

X 61. Very well, I refer to them as such; when you attempted those negotiations as to whether you can give the dates.

A. They were within—all occurred some two or three days after my return.

X 62. Are you acquainted with Mr. Hammond?

A. Never had any business with him.

X 63. What was Mr. Hammond doing at the time you had this talk with Mr. Bogue that you speak of?

A. My remembrance is they were in partnership.

X 64. Well, what was he doing at the time you had this conversation?

A. I didn't see Mr. Hammond.

X 65. Who did you see besides Mr. Bogue?

348 A. There was another gentleman there; I don't remember his name, a sandy complexion, large gentleman.

X 66. A man that you knew?

A. No, sir: I didn't know him personally.

X 67. Have you any means of stating his name?

A. No, sir.

X 68. Just describe the man, as near as you can.

A. He was a gentleman that dressed rather extravagantly, I noticed, and I would judge he was 190 or 200 pounds weight; wore rather flashy jewelry; I don't know but what it was solid, though.

X 69. What age did he appear to be?

A. About 45.

X 70. What was his appearance otherwise?

A. Rather dignified.

X 71. Well, describe the appearance of his face, as near as you can?

A. I think he was inclined to be a little bald, probably not a very good——

X 72. How about his beard?

A. It was sandy, what he had, if he had any.

X 73. Did he make any remarks on that occasion?

A. No, sir; he was sitting at his desk writing when I was in that day; my attention was called to him growing out of the fact that it was very good broadcloth that he wore and the character of his jewelry; that fixed it in my mind; I don't know why it was; his coat was very excellent.

X 74. Dressed better than you?

A. Better than real estate men are usually able to dress.

X 75. Better than you were dressed?

A. Certainly, without reflecting on the gentleman.

X 76. Have you had dealings with Michael Traver since that time?

A. I have never had any dealings directly with him; I have
349 made one or two trades with him since that time, as agent.

X 77. Been in the habit of meeting him occasionally up to this time?

A. Yes, sir. I have been to see him every month nearly—probably oftener. I have resided about a year and a half in the country.

X 78. Whereabouts?

A. About a mile north of Prospect Park.

X 79. Resided near Traver?

A. No, sir.

X 80. Mr. Wolfe, who was it that directed you at Snyder & Lee's office where to find Mr. Hyde?

A. Mr. Snyder.

X 81. What direction did he give you?

A. He said he thought that I would find Mr. Hyde in Mr. Bogue's office, and I left the office intending to go there.

X 82. Where did you go then?

A. Directly there.

X 83. What place did you go to?

A. Dearborn street, Honore building.

X 84. What block was the office in?

A. In the Honore block.

X 85. Do you recollect the number of the street?

A. I think it was 184, but I am not positive.

X 86. It was Hammond & Bogue's office, on the first floor?

A. On the first floor.

X 87. When was the time that you first went to Hammond & Bogue's office, in the Honore building, to see Mr. Hyde?

A. The early part of December.

X 88. Of what year?

A. 1874.

X 89. Did you see Mr. Hyde there then?

A. I did.

350 X 90. What was Mr. Hyde doing there then when you went there?

A. He was engaged in a conversation with some gentleman there; I waited a few moments before I got to speak to him.

X 91. On that occasion was there any negotiation or talk then in regard to the Traver's subdivision at that time?

A. No, sir; he only mentioned that among other property at that time.

X 92. That he had for sale?

A. Yes, sir.

X 93. He was then doing a real estate business, was he not, or negotiating in buying and selling real estate?

A. Yes, sir; I think so.

X 94. Where was Hyde's desk situated in the office; what part of the office—I mean the office where you found him?

A. I was not in the office; only just went to the door, and Michael Traver went in.

X 95. You say Mr. Hyde spoke about the property?

A. That was at the Nixon building; I was not in the office at all.

X 96. On this first occasion that you went to Mr. Hyde's office, in the Honore block, was there anything said then about Traver's subdivision; when was the first occasion that you saw Mr. Hyde at this office, in the Honore building?

A. It was about the first week in December.

X 97. Was there anything then said about Traver's subdivision at that time?

A. There was; it was mentioned among other property.

X 98. Mentioned that among other property that he had for sale?

A. Yes, sir.

X 99. That was the time that Traver was with you?

A. Yes, sir.

X 100. Did you then go into the office?

A. Went in and sat down, if I remember right.

X 101. Where was Mr. Hyde's desk?

351 A. I don't remember that he had an office there; don't know that he had.

X 102. What was he doing that time that you went in there?

A. He was talking with some gentleman; I don't know who—a stranger to me.

X 103. Now when was the next occasion that you went to that office to see Mr. Hyde?

A. The next occasion was after my return from Crown Point, the latter part of the month, probably within a week.

X 104. You first went to Snyder & Lee's office, in Nixon Building, and they directed you to this office in Honore Building?

A. He said he went out and intended to go there before he returned and that I would probably find him there.

X 105. And then you went to the Honore Building?

A. Yes, sir.

X 106. You say you didn't find him?

A. I didn't find him.

X 107. Did you go there again after that?

A. I did not.

X 108. You were not in that office after that?

A. No, sir.

X 109. Did you have occasion after that to see Mr. Hyde?

A. No, sir; because I met Mr. Traver and learned that the property was not for sale.

Mr. McCoy. The property that you wanted?

A. Yes, sir.

X 110. Where did you stop when you went to Crown Point, Mr. Wolfe?

A. At Mr. Hughes' residence.

X 111. Mr. Wolfe, give a brief description of this property that you refer to as having been in your hands to sell at Crown Point?

A. Part of a 1,100-acre tract of land—400 acres of that farm fenced or partly fenced.

X 112. I don't want a description of the surface of the
352 soil, but a description of the land—section, range, and so on.

A. It would be impossible for me to give that from memory.

X 113. Did you have any plat of it?

A. Yes, sir.

X 114. Who did it belong to?

A. It belonged to Mr. Hughes.

X 115. What was his first name?

A. J. W.

X 116. How much was there in the piece that you had?

A. 560 acres. In fact, I had the entire tract of 1,100 acres to be disposed of. It was partnership property really.

Cross-examination by Mr. J. E. Monroe:

X 1. Mr. Wolfe, you have stated that you can fix the time when you went to Crown Point by reference to a real estate transaction, which you had with Mr. Hughes; what was that real estate transaction?

A. It was the negotiation of some property at Lake Forest.

X 2. Have you any written memorandum of that negotiation?

A. I don't think they are preserved.

X 3. Will you state how a negotiation about some property at Lake Forest fixes the time when you went to Crown Point, or how

you can recollect the time of the negotiation any better than you can recollect the time you went to Crown Point?

A. Mr. Hughes telegraphed me for me to come down, and it was in regard to that property.

X 4. Is that the only answer you can make to the question?

A. I must confess that I don't understand it very well.

X 5. Have you that telegram with you?

A. I have not, sir.

X 6. When did you see it last?

353 A. I think maybe in the latter part of 1874.

X 7. How long after you got that telegram did you go to Crown Point?

A. The next day I think.

X 8. Do you recollect that you went the next day?

A. I think so.

X 9. Where is your office?

A. 156 Washington St.

X 10. Where was your office in December or January?

A. 199 Madison St.

X 11. Do you undertake to swear, Mr. Wolfe, that without any written memorandum or any writing whatever to fix it, you can state from mere recollection the time when you had this pretended conversation with Mr. Bogue in his office?

A. I can.

X 12. Where were you a year ago to-day, and what were you doing?

A. I was in Prospect Park a year ago to-day.

X 13. What were you doing?

A. What time of day is it now? I can tell you exactly if you tell me the time of day.

X 14. State what you were doing during the whole of the day.

A. I came to the city on the 8 o'clock train and went home on the 5.15.

X 15. You recollect that as an independent fact, do you?

Objected to by Mr. McCoy.

A. I remember it as a fixed fact.

X 16. When did you first talk to Michael Traver in regard to the evidence which you have just given?

A. Never talked with him in regard to the evidence.

X 17. When did you first talk to anybody about the evidence which you have just given?

A. Never talked to any person.

354 X 18. Do you mean to say that you were brought here to testify without your telling anybody what you would swear to?

A. Yes, sir.

X 19. Then you have told nobody the facts which you have stated here in reference to your pretended conversation with Mr. Bogue prior to the time when you stated them here under your oath?

The word "pretended" is objected to, as not fair to the witness.

A. The questions were never asked me. I had no occasion to.

X 20. How did Mr. Traver know what you would swear to, when he came to get you to testify?

A. He knew the fact that I called on him with regard to the property at that place, and he came and asked me it I had ever seen the parties relative to it, after the time that we were there.

Redirect examination by Mr. McCoy:

1. When did Mr. Traver speak to you and ask you whether you recollected about this property in reference to your testifying here; how long ago?

A. Some two or three weeks ago.

2. He did not ask you all these varied questions, that these gentlemen have been asking you, at that time?

Objected to.

A. No, sir.

3. You state in your previons examinations that one of the reasons that you recollected the real estate transaction that you had with Mr. Hughes was, that you got home about the holidays, is that so?

A Yes, sir; it was prior to the holidays a week or ten days, as near as I can remember.

355 4. You haven't stated the precise day, nor do not pretend to state the precise day that you had this conversation with Mr. Bogue about this block?

Objected to by Mr. Ingalls.

A. No, sir.

5. You say that after you saw Mr. Bogue at this time and had this conversation with him, that you had no occasion to see Mr. Hyde after that?

A. I had not.

6. Why?

A. I saw Mr. Traver a day or two afterwards and he said the property was not for sale.

7. Where was Mr. Hyde's office, as you understood it, in the month of December, 1874?

Objected to by Mr. J. E. Monroe.

A. My understanding with Mr. Traver was that it was in the Nixon building.

All the testimony of the following witness-- is ojected to by Mr. Ingalls.

HENRY J. TRAVER, recalled.

Examination by Mr. McCoy:

Mr. Hyde has testified in his examination that he requested Michael Traver to have you come into his office and have a conversation with you before closing the trade with Michael, which was going on the last days of December, 1872,* and the first week in

January, 1873;* you may state whether Michael Traver ever requested you to come in and have any such conversation with Mr. Hyde at those times?

(The figures 4 and 5, in the years 1874,* 1875,* were changed to 2 and 3, so as to read 1872* and 1873,* by consent of counsel and in their presence.)

Nov. 15, 1878.

A. No, sir; he did not. H. WALLER, *Master.*

356 2. Mr. Hyde has also stated that you were present at the office of Snyder & Lee, where he kept his office in the forepart of January, 1873, and consulted with him in reference to his trade with Michael, about taking Michael's share of the property off his hands; you may state whether you were ever there in the month of January, 1873, at that office, and had any conversation or consultation with Mr. Hyde in reference to that matter.

A. I was not there, neither did I have a conversation with Mr. Hyde.

3. Where were you in the forepart of January, 1873?

A. I was at home in the town of Wheaton.

4. You executed a deed, together with your wife, of block 2 and all of block 3, except 8 lots, in Traver's subdivision, about the first of January, 1873, did you not?

A. I presume I did.

5. Where was that deed executed?

A. At Wheaton.

6. Where was it acknowledged?

A. At Wheaton.

7. How was it conveyed to Chicago; do you recollect?

A. Received by mail and sent by mail.

8. Who did you receive it from?

A. From Michael Traver.

9. Did you have any conversation or negotiation with Mr. Hyde personally, or in presence of Michael Traver or any other person, in reference to the contract that he had with Michael Traver to take block 2 and the balance of block 3 off his hands?

Objected to, as leading and incompetent.

A. I did not have any, excepting as I have stated in my evidence; the 2d day of July, 1873, was the first and the only conversation at that time.

357 10. In that year?

A. Yes, sir.

11. Then the first conversation, as I understand you, that you ever had with James C. Hyde relative to his connection with the Traver subdivision, at Lawndale, was in July, 1873, is that so?

A. The first conversation that I had was on the 2d day of July, 1873.

12. You say that the deed you executed to Michael Traver for block 2 and all of block 3, except 8 lots, was sent to Michael Traver?

A. Yes, sir.

13. Have you any corrrspondence between you and him relative to his arranging with Mr. Hyde relative to the trade with Mr. Hyde?

A. Yes, sir; I have something that relates some to it.

14. Will you produce it?

A. Yes, sir; there is a letter written on the 4th day of January, 1873, which gives some light in relation to it, and then here is another which was written January 8th, that is more of an extended history of the affair; that one there, January 8th, seems to be an answer to one that I had written him.

Mr. McCoy: Let the gentlemen (Mr. Ingalls & Mr. Monroe) look at them, and then you may attach them to your deposition.

Letters objected to by Mr. Ingalls.

The letters are here attached, marked "M."

15. State whether or not you ever made any agreement with Mr. Hyde, or gave your consent to Mr. Hyde to release block 2, in Traver subdivision?

Objected to by Mr. Ingalls.

Question withdrawn.

16. State whether or not you ever made any agreement
358 with Mr. Hyde that he should procure from Mr. Ayres and Mr. Dixon, or any other person, a release of the Dixon mortgage on block 2?

A. I did not with Mr. Hyde or any one else, in relation to any release whatever.

17. Did you ever make any agreement with Mr. Hyde or Michael Traver or any other person, that Mr. Hyde should procure such release of the Dixon mortgage as he might agree with Mr. Dixon?

A. No, sir; I did not.

18. Did you ever have any conversation with Mr. Hyde on this subject prior to the 2d day of July, 1873?

A. No, sir.

MICHAEL TRAVER recalled.

(Following testimony objected to by Mr INGALLS.)

Examination by Mr. McCOY:

1. Mr. Hyde, in his testimony taken in this cause, stated that he made an arrangement, by paying a certain sum of money to Mr. Dixon, to procure the release of the Dixon mortgage from block 2, in Traver's subdivision, and that he made this fact known to Michael Traver before he made the trade with Michael Traver; state whether that is the fact or not.

A. That is not the fact; I never knew of a release given on block 2 until I heard it from my brother.

2. You may state whether you ever made any agreement with Mr. Hyde, authorizing him to negotiate with Mr. Dixon, or whoever might hold the Dixon notes, the power and authority to re-

lease any portion of the Dixon mortgage to Traver's subdivision that he and Mr. Dixon might agree upon.

359 A. No, sir; I never did.

3. You say you never made any such arrangement with Mr. Hyde?

A. No, sir; I could not, for I had never made any arrangement whereby I had any authority to make any arrangement of that kind with Mr. Hyde or anybody else.

4. Mr. Hyde also testified that before he would close the bargain that he requested you to send for your brother Henry and have him come in and ratify whatever agreement he and you would make; state whether it is so.

A. This I never heard of before until I heard Mr. Hyde repeat it here.

5. Do you recollect the time, or about the time, that Mr. Lee endorsed the Dixon notes with the name of Snyder & Lee?

A. No, sir; I don't know that I recollect; my impression is it was about the time Mr. Hyde paid off the two first notes to Mr. Dixon. Mr. Hyde told me, I recollect, that that was the agreement he had made with Mr. Dixon by paying off the two first notes.

6. And releasing block 3?

A. Releasing block 3, and Messrs. Snyder & Lee were to endorse the notes with him guaranteeing payment.

7. State whether or not you ever sent for your brother Henry, or procure your brother Henry to come in in the fore part of January, 1873, and make arrangement with Mr. Hyde about the trade that you and Mr. Hyde were making?

A. No, sir; I never did.

8. State whether or not you were ever present at Snyder & Lee's office, in the month of January, 1873, or February, 1873, together with your brother Henry and Mr. Hyde?

A. Never was in with my brother in January at all.

9. 1873?

A. No, sir. I was with my brother later than that—the

360 time of paying some tax.

10. About when was that?

A. Well, it was some 4, 5, or 6 months after that; I think it was in 1873.

11. When was the first time when your brother Henry and yourself had a conversation in Snyder and Lee's office with Mr. Hyde, in reference to your trade with Mr. Hyde about the Traver's subdivision.

A. At the time he went into the settlement about taxes on block 1 and his eight lots in block 2.

12. Were you present at that settlement of taxes?

A. Yes, sir.

13. State whether or not Mr. Hyde at that time gave a tax receipt to your brother.

A. He did, and my brother handed it to me, and I read it over and handed it back to him.

14. At the time?

A. Yes, sir.

15. Look at the receipt now shown you; state whether that is the receipt that was given at that time.

A. Well, the receipt given at that time was for $150 or $160, signed by Mr. Hyde, and I know of no other receipt that my brother has got from him, and I should judge that is the one.

16. You may attach it to your deposition marked "N."

Objected to by Mr. Ingalls.

17. You may state if that is the time that you speak of as being the only time that you recollect of your brother and you having any conversation with Mr. Hyde at Snyder & Lee's office, in reference to Traver's subdivision.

A. That is the only time.

18. Mr. Hyde has stated the following in his answer to the
361 11th direct interrogatory of his deposition, taken in this cause, namely: "It was distinctly understood before I took the property in my charge that it was impossible to sell or dispose of the land unless releases were procured, and it was so agreed between Mr. Traver and myself that I should make such arrangements with Mr. Dixon as I could in reference to procuring a release of this property in question, blocks 3 and 2"; state whether there was any such understanding between you and Mr. Hyde or agreement.

A. There was no such understanding between Mr. Hyde and me. At the time Mr. Hyde was ready to make the payment of the two notes, one was due and the other not due; he then said that it would be impossible for him to make any payment unless he could get block 3 released. By having block 3 released, and by paying for the incumbrance on the whole, that he could manage it, and that was the only release that was ever mentioned to me by Mr. Hyde in regard to the property in Lawndale.

19. State whether you are acquainted with the value of lots in block 2, in Traver's subdivision in Lawndale, in the forepart of April, 1873.

A. Why, I had general knowledge in regard to the value of the property there.

20. State what, in your opinion, lots 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 were worth in block 2, Traver's subdivision, on or about the 5th day of April, 1875, apiece.

A. Those lots were worth, to my judgment, about $250 apiece, being near the railroad track.

21. What were the other lots in that block worth apiece, on an average, at that time?

A. They would average from 300 to 350.

22. Dollars apiece?

A. Yes, sir.

362 Adjourned to 10 a. m., Thursday, March 28, 1878.

10 A. M., *March* 28, 1878.

Parties met pursuant to adjournment.

OSWELL A. BOGUE recalled.

Direct-examination by Mr. Ingalls:

1. Are you or were you in 1874 or 1875 acquainted with one Josiah S. Wolfe?

A. I do not know the name at all, sir.

2. Have you read the testimony given by Mr. Wolfe in this case, purporting to detail conversation with you in January, 1875?

A. I have.

3. What is the fact with respect to any such conversation ever having taken place between you and Mr. Wolfe?

A. There was never any such conversation.

4. Did you at any time before the occasion when Henry Traver informed you that he had an interest in block 1, as you testified in your previous deposition, have any conversation with Mr. Wolfe or any person in which you pointed out block 1, of Traver's subdivision, or in which said block 1 was pointed out by any other person, and you stated that block 1 belonged to Henry Traver, or that it belonged to Michael Traver's brother?

Objected to by Mr. McCoy.

A. I never had anything to do with block one in any way, shape, or manner. I knew nothing about it, as to ownership, until Henry Traver told me it belonged to him. I never had it in my hands for sale. I never showed it to any man. Mr. Wolfe or anybody
363 else. I never offered it either for sale or trade in my life. I never stated to any one that it belonged to Michael Traver's brother or to Henry Traver.

5. From the month of October, 1874, up to and including January, 1875, what was your business Mr. Bogue?

A. My business was loaning.

6. Loaning money you mean?

A. Loaning money under the name of Hammond & Bogue. I did within that time do something in the way of real estate, but principally looked after my own matters in real estate. I was not doing a general real estate business.

7. I will ask you whether during the time from the month of October, 1874, up to and including January, 1875, you had any transactions with a man of the name or calling himself Josiah S. Wolfe, or J. S. Wolfe?

A. I don't remember that I ever had anything to do with the man. I don't now remember that I ever heard the name.

8. During that time did any man come to you to trade, or to state that he wanted to make a trade of a farm for property on Ogden avenue?

A. Not to my recollection.

9. State whether at any time you went to see Mr. Wolfe, or any person, at an office at Number 199 Madison street, during the time I have mentioned about any trade respecting land?

A. No, sir, I never did; never was at 199 Madison street in the way of business.

Cross-examination by Mr. McCoy:

X 1. You say you never had block 1 of Traver's subdivision for sale; did you have any part of Traver's subdivision for sale?

A. Not absolutely. After Mr. Hyde and I went to work together in real estate matters, I entered upon the books a few lots in
364 block 2 which he offered for trade, and those—well I should say there were six to ten lots aside from those two lots—no part of Traver's subdivision was offered for sale by me, or as I know of, by Bogue & Hyde.

X 2. Was not Mr. Hyde frequently in your office before you and he went in together?

A. He was frequently in the office.

X 3. Where was his office before he went into partnership with you?

A. With Snyder & Lee, corner of La Salle & Monroe streets; Mr. Hydes business in our office at the time when he was there was more in the way of making loans; looking after business that was directly with him and Hammond & Bogue.

X 4. Was he not very anxious to sell any lots that he had a right to sell in block 2 or block 3, in Travers subdivision, for the purpose of paying off those loans?

(Objected to by Mr. Ingalls.)

A. Not at that time.

X. 5. At what time?

A. You have no reference I suppose to the time between October, 1874, and January, 1875.

X 7. I have reference to about the first of January, 1875.

A. I can not tell what Mr. Hyde's anxiety was, but I never offered for sale for him any portion of Traver's subdivision up to that time.

X 7. Was he not endeavoring in your presense, and frequently offering his lots or the anxiety he had in those lots in block 2 and 3, in that division, in order to raise money to pay off the loan that he had taken?

A. The only sale that I know of Mr. Hyde's having made, or that I know of his trying to make, was the sale of those lots to Goss, in which he paid me $6,000. That is the only sale that I know of his trying to make.

X 8. Is it not likely, Mr. Bogue, that if a person should come into your office on a hunt of Mr. Hyde, desiring to trade for
365 lots in Traver's subdivision, and Mr. Hyde was out, that you would say something to him in the way of endeavoring to have him make the trade with Mr. Hyde, or to find out what lots he wanted?

A. Never at that time, for I knew that as far as block 2 was concerned that it was encumbered to that extent in that way that it was unsalable; my knowledge of that fact would prevent my asking any questions as to any trade that a man might come in and talk about as to block 2; as to block 1, I knew nothing about it

whatever, except information that *that* I got after the purchase of that paper, and with the knowledge that I then had.

X 9. You were not doing a large business in the loaning line or real estate about the 1st of January, 1875, were you?

A. I should say that the business was not very good at that time.

X 10. State whether many people came to your office at that time or not.

A. I should say that there did, for one season or another.

X 11. Would you pretend to recall the names of all persons that came to your office during the latter part of December, 1874, and January, 1875?

A. I should if I had any business with them; anything particular I think I should remember names. I should remember something as to the transaction. I don't pretend that I remember every name that came into the office.

X 12. You say you were not in the real estate business particularly before you and Mr. Hyde went in?

A. Never outside of my own real estate matters.

X 13. Didn't you have considerable of your own real estate matters?

A. I did.

X 14. Did you ever have in consideration any property in the nature of a fruit farm over in Michigan?

366 A. I don't remember that I did at that time; in fact I had nothing to do with fruit farms in St. Jo., or Michigan, until after Mr. Hyde went into business with me. He introduced the fruit farm trade to the office. Up to that time I had nothing to do with fruit farms in Michigan.

X 15. Didn't he call your attention to the fruit farm trade a short time previous to his going into the office?

A. Not in a way; I cannot say that he did; if he did it was in no way by which I took interest enough in it to have anything to do with the fruit farm trade.

X 16. Do you not recollect advertisements appearing in the newspapers in reference to the sale of a fruit farm in Michigan, signed by Mr. Wolfe?

A. I think I never answered an advertisement in relation to a fruit-farm until after my connection with Mr. Hyde.

X 17. Did you know anything about the trade that Mr. Hyde had with Mr. Wolfe, or the contemplated trade in reference to Pacific Hotel stock?

A. I never knew that Mr. Hyde had any Pacific Hotel stock until after March, 1875. I think the first time that I knew anything at all as to the Pacific Hotel stock was after Mr. Hyde came into the office; he offered some of that stock for trade. I never knew that he had any, or represented any, before March, 1875. I knew nothing, in fact, as regards Mr. Hyde's business until after he went into the office and we went to work together in the matter of real estate. I had very little business to do with Mr. Hyde outside of the loans that we were making to him.

X 18. Did you know that he was talking of a trade, or contem-

plating a trade, with Mr. Wolfe, of a portion of this Pacific Hotel stock?

A. No, sir.

X 19. You say that you did answer an advertisement or take some interest in a Michigan fruit-farm after Mr. Hyde
367 came into the office; will you state what property or what fruit-farm you did take such interest in, giving the description of it, if you can?

Mr. INGALLS. That is objected to for the reason that I do not understand Mr. Bogue to have made any such statement in his testimony as is stated in this interrogatory.

A. As I understand that question, it is whether or not I took any interest in answering advertisements after Mr. Hyde came into the office. If the question means that, I say that I did. [After referring to book.] You can say W. E. Higinans' fruit farm for one, a fruit farm on the Lake Shore road, two miles south of St. Jo., John H. Lee two farms, and J. H. Wallace. There is a farm of C. Kapser and D. Bonnell.

X 20. State what book you are reading these descriptions from.

A. Well, it is an entry book or memorandum book of Bogue & Hyde, in which were entered property put in our hands for sale.

21. Please turn to the first of the book and give the date of the first entry in it.

A. The entry is March 1, 1875.

OSWELL A. BOGUE.

Adjourned to June 8, 1878.

368 *Testimony for Defendant, Samuel A Sawyer, taken June* 8, 1878.

Mr. MONROE. I now offer in evidence a certified copy from the records of the circuit court in Cook county, Illinois, of a declaration and cognovit, two notes and warranty of attorney attached to said declaration, and an affidavit of the execution of said notes and warrants of attorney, and a judgment of said circuit court of Cook county, and an execution or *alias* execution issued on said judgment, and the sheriff's return of sale thereon, in the case of said Samuel A. Sawyer against Thomas D. Snyder, J. Lewis Lee, and James C. Hyde, which certified copy I ask to be attached to these depositions and marked "Exhibit O."

I also offer in evidence deed by the sheriff of Cook county, Illinois, to said Samuel A. Sawyer, conveying to him said lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19, (11 to 19, both inclusive,) in block two (2) of Traver's subdivision, and ask to have said deed marked as "Exhibit P" to these depositions.

The deposition of LUCIUS A. WILLARD, a witness introduced, sworn, and examined on the part of defendant, Samuel A. Sawyer.

1. State your age, residence, and occupation.

Ans. I am 55 years old; residence, Chicago; occupation, real estate broker.

2. Do you know the defendant, Sam'l A. Sawyer?
Ans. Yes, sir.
3. Where has he resided for the last two years?
Ans. In New York city.
4. Who was his agent at Chicago in the month of January, 1875, and for the succeeding two years?
369 Ans. I was his agent and attorney in fact.
5. Look at the certified copy of the record, marked exhibit, and state how much, if anything, was due to Samuel A. Sawyer from Thomas D. Snyder, J. Lewis Lee, and James C. Hyde, on the 15th day of January, 1875, on the notes and warrants of attorney which are shown by said record.
Ans. Three thousand and seventy-one $\frac{1}{100}$ dollars.
6. What was the consideration for these two notes and warrants of attorney?
Ans. Cash advanced by said Sawyer to Snyder, Lee, & Hyde.
7. At the time of the recovery of the judgment shown in the record, did you have any notice or knowledge of any agreement or pretended agreement between Henry J. Traver or Michael Traver, or between them or either of them, and James C. Hyde, regarding the obligation of Michael Traver or of James C. Hyde, to take care of or pay off what is known as the Dixon encumbrance on Traver's subdivision, or to save and clear block 1, of said Traver's subdivision, from the said encumbrance?
Ans. Not the slightest knowledge. I had never heard of any such agreement at all, at that time.
8. Did you have any such knowledge or notice during the year 1875?
Ans. No, sir.
9. Did Mr. Sawyer ever pay any personal attention to entering up this judgment or making the sheriff's sale thereunder?
Ans. No, sir.
10. Who did conduct that business for him?
Ans. I attended to it entirely.
11. Where was Mr. Sawyer during all this time?
Ans. In the city of New York.

L. A. WILLARD.

Adjourned to 3 p. m., 19 Sept., 1878.

370 HENRY L. HAMMOND, a witness, recalled 3 p. m., Sep. 19, 1878.

Examined by Mr. McCOY:

1. Please attach copies of all the correspondence between C. A. Richardson and the firm of Hammond & Bogue relative to the loan of said Richardson, made by said Hammond & Bogue for him to James C. Hyde, and secured by the said Traver property, and designate such copies by such marks or figures as you may desire.
Ans. I do now hereby produce and attach such copies, marked from one to 34, inclusive, as part of this my deposition. In said copies of letters there are two marked 18 by mistake, there being 35 copies

instead of 34, as numbered. I have compared said copies with the originals, and with letter-press copies on file in my possession, and find the same to be correct copies of said correspondence. These copies, commencing in December, 1872, and ending in April, 1876, embrace all the correspondence touching said loan which I have been able to find and of which I have any knowledge.

2 Please attach a correct copy of the account touching said loan between said Richardson and Hammond & Bogue as it appears on your books.

Ans. I hereby produce and attach to this deposition as a part of it, marked "Exhibit O," a correct copy of the whole of the account between s'd Richardson and Hammond & Bogue, which embraces all the items of account touching said loan, as well as some other matters. (Dep's cont'd over to page 134, and examination resumed by Mr. McCoy on 15 Nov., 1878.)

SEPT. 25, 1878.

The defendant, MARY ANN PEARSON, by her solicitor, J. E. MONROE, Esq., produced and filed as evidence in this case a warranty deed from James C. Hyde to said Mary Ann Pearson, marked "Exhibit P."

H. WALLER, *Master.*

371 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Henry Waller, one of the masters in chancery of the circuit court of Cook county, do hereby certify that previous to the examination of the witnesses whose names are subscribed to the foregoing depositions, contained in pages numbered from 1 to 220, they were each by me duly sworn according to law; that the same were taken at my office, in Chicago, upon oral interrogatories propounded by Alex. McCoy, Esq., solicitor for complainant, and by F. C. Ingalls, Esq., H. S. Monroe, Esq., T. E. Monroe, Esq., solicitors for the defendants, and that they were subscribed and sworn to before me, by the said witnesses, respectively, on the 19th, 20th, 23d, 27th, and 28th days of February, 2d, 4th, 6th, 11th, 20th, and 28th March, 8th June, and September 19th, 1878, except that the witnesses, J. L. Lee, M. W. Manning, and Josiah L. Wolfe, have not subscribed their depositions, nor have the witnesses Enos Ayres, Henry J. Traver, and Michael Traver signed the portion of their depositions given when recalled.

HENRY WALLER,
Master in Chancery of Circuit Court of Cook Co.

Master's fees for depositions:

Complainant	$36 50
Deft. Richardson	51 54
Deft. Sawyer	3 00
	$91 04

Also the deposition of Charles A. Richardson taken at 2 p. m.

on Saturday, 5th October, 1878, introduced, examined, and sworn on the part of the complainant.

372 1. State your age, residence, and occupation.

Ans. My age is 48 years; residence, Chelsea, Massachusetts; my occupation is editor and publisher.

2. Are you the complainant in the bill of Chas. A. Richardson *vs.* Henry J. Traver *et al.*?

Ans. I am.

3. State where you do business.

Ans. At Boston, Massachusetts.

4. State whether or not you ever sent any money to Hammond & Bogue, city of Chicago, to be loaned by them; if so, state when, and how much?

Ans. Yes; I sent two separate sums of $10,000 each; they were both sent, according to the best of my recollection, during the latter part of 1872, and the early part of 1873.

5. How did you send that money?

Ans. It was sent by draft, in part, I know, and I think it was all sent by draft.

6. In what way did you make the contract with them to loan said money, by letter or by parol?

Ans. I had conversation with them in general, telling them I expected to wish to loan some money through them, and I afterwards wrote them to draw on me when they were ready for it.

7. When and where was that conversation, and with whom?

Ans. It was with Mr. Hammond, and I think in Chicago; it is possible I talked with him in Boston; I saw him in both places, to the best of my recollection; I should say such conversation was from a month to three months before I sent the money.

8. Were there any details arranged and fixed upon in this conversation relative to said loan?

Ans. I think of none other than that I was to realize 10 per cent., and to have bottom or first security.

373 9. State when said loans were made, as near as you can, and what security you received for said loans.

Ans. I should think in January, 1873; one of the loans of $10,000 was in notes of $6,000 and $4,000, signed, according to my recollection, by James C. Hyde, to the order of Michael Traver; the other loan was, I think, made to Oswald A. Bogue.

10. Do you know whether these two notes of $6,000 and $4,000 were endorsed by Michael Traver, and, if so, how?

Ans. I think they were, in the usual way.

11. Were they not endorsed to you, as guardian?

Ans. It is impossible for me to say just how they were written; the notes will show for themselves.

12. To whom did the money loaned to Hyde, and for which he gave his notes, belong?

Ans. It was money that belonged to me; I was loaning it, however, as an investment for my brother's children.

13. What were the names of your brother's children?

Ans. Leander P., Maud L., and Albert D. Richardson.

14. Then I understand you to testify that these children of your brother just named had no interest in this money; was that so?

Ans. I sent that amount here, not being sure how much of it should be loaned on behalf of my brother's children, and wishing, also myself to loan some. It was part in my own behalf and part in their behalf.

15. Please state how you acted in this matter for your brother's children; whether in the capacity as guardian or not.

Ans. So far as I was acting for them I was acting as guardian for them in loaning this money.

16. I am now speaking of the Hyde notes; please state when you received them, and their securities from Hammond & Bogue—that is, the trust deeds.

374 Ans. In due time as expected; can't fix the date.

17. Have you got those notes & securities yet?

Ans. I have not got them in my personal possession.

18. When were they taken out of your personal possession, or when did you part with them?

Ans. I can't fix the date.

19. Can't you approximate the date when they passed out of your possession; was it a year or two years after you received them?

Ans. I should say about the time they were due.

20. Please state what you did with them about the time they were due?

Ans. Sent them to my agents, Hammond & Bogue.

21. Did you then receive the money on them?

Ans. I did not.

22. After you made this loan, being in January, 1873, up to the time you sent these notes to Hammond & Bogue, did you have any communication relative to them with Hammond & Bogue other than by letter?

Ans. I am unable to answer that with certainty.

23. Was any part of these Hyde notes paid to you before you sent them to Hammond & Bogue?

Ans. None of the principal.

24. Was any of the interest paid to you before you sent them; if so, how much?

Ans. The interest had been paid, I think, for two years.

25. State whether or not you recollect of receiving interest on these Hyde notes about July, 1875, from Hammond & Bogue?

Ans. I do not, at that particular date. I cannot say that I did not.

26. How much interest was unpaid when the notes fell due?

Ans. Either for six months or a year I think.

Cross-examination by Mr. INGALLS:

X 1. Is it not the fact that at the time you had the first
375 conversation with Mr. Hammond about sending him money to loan, you were residing near and doing business in Boston, and have so resided and been so engaged ever since that time,

while Hammond & Bogue, your agents for making the loan, were in Chicago?

Ans. That is the fact.

X 2. Did you not, in your conversation with Mr. Hammond, make it an express condition that the securities to be taken on the loans should be first liens on land?

Ans. Certainly; I made that a vital point all through.

X 3. Was it not understood between yourself and Mr. Hammond that all the details regarding the loans and the securities and in regard to the selection of the land on which the securities were to be taken were to be attended to by Hammond and Bogue exclusively; and did you not depend upon them wholly to see that your loans were properly secured and kept secure?

(Objected to, because the latter part of the question don't ask him to state what the contract was between Hammond & Bogue, but simply what he depended upon.)

Ans. Yes; I had full confidence in them, and left it entirely in their hands. The loan was made through them on the ground of my personal confidence in them. I did depend upon them wholly, and expected them to watch my interests until the loan was paid.

X 4. Had you not known Mr. Hammond for a long time before the time of these transactions, and was not your confidence in him the result of the long previous acquaintance; and did you not at the time of the conversation you had with him in substance request or charge him to act in your interests in respect to moneys you should send forward to be loaned in his best discretion, and so as to protect your interests under all circumstances?

376 Ans. I had known him many years, and I make an affirmative answer to all the clauses of the question. I had told him that I would come out to Chicago to look after my interests, if it were necessary; but he assured me he would have them in careful charge, looking after my interest in the matter.

X 5. In your direct examination you spoke of having the notes for $6,000 and $4,000 made by Hyde and endorsed by Michael Traver in your possession until near the time they were due; were you not informed of the fact before you forwarded those notes and the trust deeds securing them to Hammond & Bogue, that they had changed the security on that loan in order that the security should be a first lien, as supposed and intended; and did you not in substance express your assent to such change when the notes and trust deeds were returned to Hammond & Bogue by you?

Ans. I was so informed, and did express my assent, having been greatly surprised to hear that my security was not first mortgage, and feeling that my interests were promoted by this change.

X 6. In view of the relations sustained by Hammond & Bogue to yourself when they made this change of security, did you not regard them as authorized, and was it not incumbent on them, to make such change, if necessary, to protect you in your security?

Ans. Certainly; their relations to me authorized them to take any action necessary to protect my interests.

X 7. After being informed that such change was made, and before the filing of your bill of foreclosure, did you not authorize and direct this bill of foreclosure now pending to be filed?

Ans. I did.

X 8. Did you not, and do you not now, regard the posses-
377 sion by Hammond & Bogue of the two notes called the Dixon notes, and the trust deeds securing them, since they took the same on the change of securities, as being held in your behalf, and being the same as your possession?

Ans. Yes; I did and do.

X 9. I understand that you are the guardian of the children of your deceased brother, and at the time when the loans in question were made you had funds in your hands belonging to them; were those funds, at that time, separate and distinct from your own funds?

Ans. They were not; I have never kept them separate; but am under bonds for all of theirs in my hands.

X 10. Then the fact is that you did not make this loan as guardian under any order of the court, but that you made it out of general funds in your hands, in the same way that you would make a loan of money in your own behalf?

Ans. Precisely; their money being personal property, it was not necessary I should get any order of court in regard to investing it.

Re-examined by Mr. McCoy:

27. If you loaned this as your own money, why did you direct Hammond & Bogue to make the notes and securities to you as guardian for these children?

Objected to by Mr. Ingalls.

Ans. Because a part of the amount came from funds that belonged to my brother's children, and it was impossible to determine just how much at that time.

28. Was any of the funds loaned to Bogue the property of these childred?

(Objected to, as irrelevant.)

Ans. A part of them may have been, in the same sense as the loan to Hyde was.

29. Then why did you not take the notes and securities in the same way—to you as guardian?

(Objected to, as irrelevant.)

378 Ans. It was a mistake, as the correspondence shows; it was the intention they should be written in the same way.

30. How did you give directions to Hammond & Bogue to foreclose these Dickson notes and trust deeds?

Ans. I had told them, I think both by letter and verbally, to foreclose whenever the notes were not paid, in case whenever, in their judgment, it should seem necessary to do so.

31. Isn't it a fact, Mr. Richardson, that you never saw either

Hammond or Bog-e, to give them any verbal directions, after the change of securities and before this suit was commenced?

Ans. I am not sure that I saw either of them, but I have repeatedly given them directions to foreclose on any securities they held of mine whenever they thought my interest required it.

32. In case Hammond & Bogue collect the Hyde notes, did you ever authorize them, or either of them, to reinvest the money so collected in Chicago?

Ans. No; but in case they could not collect on these notes they were authorized to exchange them for other securities that were better.

33. When and how did you authorize them to exchange them for better securities?

Ans. I cannot name the time and place, but I have given them repeatedly such general directions as to looking after my interest as justified them fully in making this or any similar exchange.

34. Wasn't it fully understood between you and them that when they collected any money on the Hyde notes they were to remit it to you, and not to reinvest it?

A. It was understood that I wanted the money, and that they were to get it as early as possible, or, in case they couldn't get it, to do the next best thing.

Re-cross examination by Mr. INGALLS:

379 X 11. In speaking of collections on the Hyde notes, do you not refer to a collection made by a payment in usual course when notes are due?

Ans. Certainly; I had nothing else in mind.

X 12. In the case of the transaction by Hammond & Bogue, in allowing Mr. Hyde to advance money necessary to take up these notes so that they could substitute the Dickson notes in order to preserve to you a prior lien and safe security, were they not acting precisely in accordance with their duty as you understood from the relation existing between you and them?

Ans. Certainly they were.

CHARLES A. RICHARDSON.

Also the deposition of LAWRENCE A. CARTON, a witness introduced, sworn, and examined on the part of the complainant:

1. State your age, residence, and occupation.

Ans. My age is 32 years; residence, Chicago; occupation, correspondent for Preston, Kean & Co.

2. As correspondent for Preston, Kean & Co. please state in what your duties consist?

Ans. The receipt of the letters and the disposal of their contents.

4. In case their contents should consist of notes and drafts, sent for collection and payment, state how you dispose of them?

Objected to by Mr. INGALLS.

Ans. In case of notes and drafts, I hand them to the collection

clerk and messenger for entry; I hand the notes to the clerk and the draft to the messenger.

5. After that, in case the notes are paid, please state who receives the money in payment of the same, and makes the proper entries on the books?

(Objected to by Mr. Ingalls.)

Ans. I usually receive the money and the book-keepers make the entries on the books.

6. State whether or not, about January 5, 1875, you re-
380 ceived any notes signed by Henry J. Traver and Michael Traver for payment in your capacity as clerk for Preston, Kean & Co.; and, if so, please state the amount of each note as near as you can.

(Objected to by Mr. Ingalls.)

Ans. I do not recollect the date or the amounts. It appeared from our letter-file that we did receive them.

7. Will you please state who you received those notes from, and in what way they were conveyed to Preston, Kean & Co.

Objected to by Mr. Ingalls.

Ans. I do not recollect; but it appears from our file that we received them from the Lafayette Bank of Cincinnati, Ohio, about January 5, 1875.

8. What sort of files do you speak of?

Ans. The letter containing them.

9. Can you produce the letter that contained those notes? and if so, attach it to your deposition, and mark it "Exhibit Z."

Objected to by Mr. Ingalls.

Ans. I now produce the said letter, and mark it part of this deposition, marked "Exhibit Z."

(Objected to.)

10. Would you be able to recognize these notes if they were now presented to you?

Ans. I cannot tell.

Counsel for Henry J. Traver now exhibited to the two notes which had heretofore been offered in evidence by counsel for def't., Richardson, dated Dec. 19, 1870, and asked the witness to examine said notes, and to state whether or not they are the notes that were contained in said letter from the Lafayette Bank. (Objected to by Mr. I.) The witness examined the notes with the letter, and stated that on comparing them with the letter they appeared to be the same.

Objected to by Mr. Ingalls.

11. Please state who received the money on these notes, if there was any received at the banking house of Preston, Kean &
381 Co.; I mean by that, what officer of the bank or clerk received the money?

Ans. I probably did.

12. Who did you receive it from?

Ans. From Mr. Bogue.

13. When Mr. Bogue paid the money on said notes, please state what he said, if anything.

Ans. My recollection is, that he said he would carry those notes for Mr. Hyde, and did not wish them cancelled.

14. When notes are sent by a bank from a distance to Preston, Kean & Co. bank, for payment, what is the custom about delivering such notes, whether they are cancelled or not before delivery?

(Objected to by Mr. Ingalls.)

Ans. Notes that are sent to Preston, Kean & Co. for collection, the party paying the money on them usually request to have them cancelled.

15. Please state why these notes were not marked cancelled, being sent for payment and the money paid?

(Objected to by Mr. Ingalls.)

Ans. They were not paid by Mr. Hyde, the party that we were instructed would pay them, and my recollection is that Mr. Bogue requested that they should not be cancelled, as he would carry them for Mr. Hyde.

Cross-examined by Mr. INGALLS:

X 1. Did not Mr. Bogue make a payment of a portion of the money required to take up the notes, and take out of the bank a certificate of deposit, and a short time afterwards come in and pay the balance at the time he took the notes?

Ans. Our books show that Mr. Bogue made a deposit, and at the time one of the notes was paid, this credit was cancelled.

X 2. Do you remember the fact, from your recollection, that when Mr. Bogue came and took the notes, the certificate of deposit was cancelled and the balance of the money paid by him?

382 Ans. I do not remember the minutia of this transaction.

X 3. Do you remember the fact of the certificate being cancelled at that time?

Ans. I do not.

X 4. Do you recollect of a further payment being made by Mr. Bogue at that time?

Ans. I recollect that he made a subsequent payment.

X 5. Was that when he took up the notes?

Ans. I think it must have been, as there appears no record of any further credit.

X 6. Do I understand that you state positively that Mr. Bogue said that he was carrying, or was to carry, the notes for Mr. Hyde?

Ans. I do not state positively that he said so.

X 7. Did not Mr. Bogue state, when he requested you not to cancel the notes, that it was not Mr. Hyde who was paying the notes, but that he had bought or purchased the notes, and was taking them up, intending to carry them?

Ans. I understood that Mr. Bogue was carrying the notes; my recollection is that Mr. Bogue said he was paying for the notes; that he was paying for the notes, and not Mr. Hyde; I do not recollect whether he stated that he had bought or purchased the notes.

X 8. Has there been anything which would bring the circumstances of this transaction particularly to your mind or recollection since it occurred, up to the time when you were inquired of about it, in view of your being a witness in this case?

Ans. There has been some inquiries made regarding the payment of money by Mr. Bogue since the money was paid in; I think these inquiries were made within the present year; I couldn't state positively when; I don't recollect that before that there occurred anything to call my attention to this transaction particularly.

Re-examined:

16. State whether or not Mr. Bogue called your attention
383 to the payment of these notes by him some time last winter or *or* early in the last spring.

(Objected by Mr. Ingalls, as leading and assuming improperly a payment of the notes by Mr. Bogue.)

Ans. I do not recollect whether he did or not.

17. Please state whether or not Mr. Bogue, in the last winter or spring, made enquiries of you in relation to the payment of these notes?

(Objected to on the same grounds.)

Ans. I do not recollect.

18. State whether or not Mr. Hyde came with Mr. Bogue to the office of Preston, Kean & Co., about the time, or a short time before, these notes were taken up, in relation to the payments that Bogue had made upon the same?

(Objected to as leading, and as re-opening complainats' case; it should have been made before cross-examination.)

Ans. My recollection is that Mr. Hyde accompanied Mr. Bogue when the payments were made upon these notes.

19. You stated in your direct examination what your best recollection was as to what Bogue said about taking up and carrying these notes; you may state whether you still recollect the transaction in the same way.

(Objected to as attempting to re-examine the witness on the original case after cross-examination.)

Ans. I don't think of anything additional.

20. When this money was paid by Bogue on these notes, state whether or not there were any entries made on the books of Preston, Kean & Co., showing who paid the money and who took the notes up, and why they were delivered to Mr. Bogue without being cancelled?

(Objected to as leading, and relating to matters which should have been called out on the direct examination.)

Ans. The bank that sent them to us appears to have been credited with the money received for the notes. There
384 does not appear to have been any entry besides what I have stated.

L. A. CARTON.

Nov. 15, 1878.

H. L. HAMMOND recalled.

Examined by Mr. McCOY:

1. In the statement of account between C. A. Richardson and Hammond & Bogue, attached as "Exhibit O" to your deposition, there is a payment to Richardson, as a credit of $400, June 30, 1875; please state upon what account or notes said $400 was applied.

Ans. It seems to be money received from James C. Hyde for Richardson on 28 June, 1875, and forwarded as the semi-annual interest then due him.

2. On what?

Ans. Due from Mr. Hyde to Richardson; there was due Richardson at that time $400; it was paid in to us, and I forwarded it to Richardson.

3. The question is, Mr. Hammond, on what account or note did this semi-annual interest arise; please state.

(Objected to by Mr. Ingalls on the ground that the state of the indebtedness and the state of the security for said indebtedness due to Mr. Richardson in question in this suit has been fully gone over and explained repeatedly, both by this witness and by Mr. Bogue, and by Mr. Hyde, and by Mr. Richardson, and that this is attempting to reopen what has already been gone over.)

Ans. I don't know that it was for me to apply it at all; Hyde paid in the money to us for Richardson, and we forwareed to him on his due.

Counsel here repeats the question, and further asks: Is that all the answer, Mr. Hammond, you can make to the question?

(Mr. INGALLS said: I object to this last interrogatory as an attempt to dictate answers for the witness, or an attempt to induce him to state what he plainly says he is unable to state.)

385 I knew that Mr. Richardson was entitled to that amount of interest at that time, for the money loaned to Hyde; whether it was to be applied on the Hyde notes or the note that had been substituted for them I did not inquire. And this is all the answer I can make to the question.

4. Was it not your understanding at the time that $400 was sen t that it was to be applied to the semi-annual interest arising out of the Hyde notes?

(Objected to.)

Ans. Arising out of the loan for which the Hyde notes were given; that was the way that Richardson became entitled to any interest.

5. You have stated in your previous testimony in this case that according to your books, the sum of $5,641.87 was advanced by Hammond & Bogue, in January, 1875, for the purpose of taking up or aiding in taking up the Dickson notes; please state to whom Hammond & Bogue charged that sum so advanced by them on their books.

Ans. I suppose I said that was advanced for the purpose of purchasing the Dickson notes; it was charged to J. C. Hyde on our books.

Re-examined by Mr. INGALLS:

1. I understand that transaction was that Mr. Hyde paid over to Mr. Bogue a certain amount of money, in the neighborhood of $6,000, and Hammond & Bogue themselves advanced a sufficient amount in addition to that, for the accommodation of Mr. Hyde, to make up the sum necessary to pay for the Dixon notes, with the understanding that Hyde was to pay up a sufficient amount on the notes to reduce them to $10,000, when they were to be held for Mr. Richardson as security for the amount originally loaned to Hyde?

(Objected to by Mr. McCoy, because counsel by it attempts to lead his own witness.)

Ans. That was exactly the understanding.

386 2. The entries on your books, then, were simply to carry out this same understanding, were they not?

Objected to, because leading.

Ans. I had some little question as to how the entries should be made, not being a professional bookkeeper, but I thought that would keep the cash account straight, and so made it. I had no other understanding about the whole transaction than that the Dixon notes reduced to $10,000 were to be security to Richardson for his $10,000 loan.

(Latter part of answer objected to as not responsive to the question, and being volunteered by the witness.)

3. About how soon did you begin giving releases from the deeds of trust securing Hyde's original notes, after you made the substitution of the securities, and took the Dickson deed of trust for account of Mr. Richardson?

Ans. The 15th January, 1875, I released lots 1 to 19, inclusive, in block 2.

4. State what releases were given after that, and the dates?

Ans. In Jan'y 22d, 1875, I released lots 37, to 40, inclusive, in block 2; February 23d, 1875, I released lots 41 to 48, inclusive,

block 2; and March 9, 1875, I released lots 30 to 36, inclusive, block 2. I think those are all the release I have given.

5. On what were you depending for Mr. Richardson's security when you gave these releases from the original deeds of trusts executed by Hyde?

Ans. On the trust deed of block 1 of Traver subdivision to Enos Ayres.

(Question and answer both objected to, as being incompetent for the witness to state what he relied on.)

6. State up to what time the $400 sent by you to Mr. Richardson June 30, 1875, paid the interest on Mr. Richardson's loan?

Ans. This paid the interest due 28 June, 1875, to Richardson.

Recross-examined by Mr. McCoy:

X 1. In giving the times of the releases of the trust deed
387 from Hyde to you, do you state the dates thereof from your own memory or not?

Ans. No, sir; not wholly. I distinctly remember the date of the first release, but for the others, I depend upon the examination of the records by Geo. L. Lee, an attorney, made at my request.

X 2. Do you know of your own knowledge, whether Lee's examination is correct or not?

Ans. No, sir; I havn't compared it with the record, but I know him to be a very reliable man.

HENRY L. HAMMOND.

It is stipulated by counsel that the memorandum of releases made by Hammond, and the list of warranty deeds made by Henry J. and Michael Traver, marked "Exhibit G. L. L.," and the abstract marked "Exhibit T. L. L.," and certified to by T. Lewis Lee, shall be considered in evidence, so that any portions thereof may be used by counsel as they may desire; subject to correction should any errors be discovered.

H. WALLER, *Master.*

I, Henry Waller, one of the masters in chancery of the circuit court of Cook county, do hereby certify that, previous to the examination of the witnesses, Charles A. Richardson, Lawrence A. Carton, and Henry L. Hammond, whose names are subscribed to their foregoing depositions, beginning at page 221 above, they were each by me duly sworn according to law, that the same were taken at my office in Chicago upon oral interrogations propounded by the respective solicitors for complainant and defendants, as shown above, and that they were subscribed and sworn to before me by the said
388 witnesses, respectively, on the 5th Oct. and 15th November, 1878.

HENRY WALLER,
Master in Chancery of Circuit Court of Cook County.

Masters' fees for above 3 depo's, $8.10.

389 2. *Dickson Notes and Deed of Trust.*

$5,373 67½-100. CHICAGO, ILL., *Dec.* 19, 1870.

For value received, four years after date, we promise to pay to the order of John Dickson lawful money of the United States, at the office of Ayres & Eoff, in Chicago, Illinois, five thousand three hundred and seventy-three and 67½-100 (5,373 67½-100) dollars, with interest, at the rate of eight per cent. per annum, payable semi-annually. This note is secured by a deed of trust, duly stamped according to law, and is to bear ten per cent. interest after maturity until paid.

HENRY J. TRAVER,
MICHAEL TRAVER.

Int. 6 mo	$214 95
" 6 "	214 95
" 3 dy's	3 57
	433 47
Prin	5,373 67
Am't	5,807 14

Endorsed across face: 1211. Dec. 19-22, '74. Pay Preston, Kean & Co., or order. Wm. J. Dunlap, cashier. Without recourse to us. Preston, Kean & Co. No. 515. C. 3664.

[Endorsements.]

Received, July 1st, 1871, two hundred and fourteen $\frac{95}{100}$ dollars, $214.95, for 6 mos. interest on within note up to June 19th, 1871, one.

Received, January 15th, 1872, two hundred and fourteen $\frac{95}{100}$ dollars, $214.95, for 6 mos. interest on within note up to December 19th, 1871, two.

Received, August 30th, 1872, two hundred and fourteen $\frac{95}{100}$ dollars, $214.95, for 6 mos. interest on within note up to June 19th, 1872, two.

Rec'd, Jan. 9, '73, $214.95, interest to Dec. 19, '72.

390 Received, June 19, '73, $214 $\frac{95}{100}$ interest to this date.

Received, December 19, 1873, $214 $\frac{95}{100}$ interest to this date.

JAS. C. HYDE.
SNYDER & LEE.
JOHN DICKSON.

Pay W. J. Dunlap, cas., or order, for coll. acc't of Ashland Nat'l Bank, Ashland, Kentucky.

A. C. CAMPBELL, *Cashier.*

$5,373 67½-100. CHICAGO, ILL., *Dec.* 19, 1870.

For value received, five years after date we promise to pay to the order of John Dickson, in lawful money of the United States, at the office of Ayres & Eoff, in Chicago, Illinois, five thousand three hundred and twenty-three and 67½-100 (5,373 67½-100) dollars, with

interest at the rate of eight per cent. per annum, payable semi-annually.

This note is secured by a deed of trust, duly stamped according to law, and is to bear ten per cent. interest after maturity until paid.

No. 514.

HENRY J. TRAVER.
MICHAEL TRAVER.

(Endorsements.)

Received, July 1st, 1871, two hundred and fourteen and $\frac{95}{100}$ dollars, $214.95, for 6 mo's interest on within note up to June 19th, 1871.

391 Received, January 15th, 1872, two hundred and fourteen and $\frac{95}{100}$ dollars, $214.95, for 6 mo's interest on within note up to December 19th, 1871, *one*.

Received, August 30th, 1872, two hundred and fourteen and $\frac{95}{100}$ dollars, $214.95, for 6 mo's interest on within note, up to June 19th, 1872, *two*.

Rec'd, Jan'y 9, '73, $214.75, interest to Dec. 19, '72.

JAS. C. HYDE.
SNYDER & LEE.
JOHN DICKSON, without recourse on me.

Pay Preston, Kean & Co., or order, for collection, without recourse to Wm. J. Dunlap, cashier.

Trust Deed.

This indenture, made this nineteenth (19th) day of December, in the year one thousand eight hundred and seventy (1870) between Henry J. Traver and Clarissa Ann, his wife, of Wadsworth, Medina county, and State of Ohio, and Michael Traver and Mary Jane, his wife, of Chicago, Cook county, and State of Illinois, party of the first part, and Enos Ayres, of Chicago, Cook county, and State of Illinois, party of the second part, witnesseth:

That whereas the said Henry J. Traver and Michael Traver have executed their four (3) certain promissory notes of even date herewith, in the sum of twenty-one thousand four hundred and

392 ninety-four & $\frac{70}{100}$ ($21,494\frac{70}{100}$) dollars, each note being for five thousand three hundred & seventy-three & $67\frac{1}{2}$-100 ($5,373 67\frac{1}{2}$-100) dollars, drawn and made due and payable to the order of John Dickson, in lawful money of the United States, at the office of Ayres & Eoff, in Chicago, Illinois, in two, three, four, and five (2, 3, 4, & 5) years after the date thereof, with interest at the rate of eight per cent. per annum, payable semi-annually, and if not paid at maturity to bear ten per cent. interest until paid. And whereas the said party of the first part are desirous of securing the prompt and full payment of said promissory notes and the interest that may accrue thereon, in whose hands soever the same may be:

Now, therefore, the said party of the first part, in consideration of the premises, and for the purposes aforesaid, and in further consideration of one dollar to them in hand paid by said party of the

second part, the receipt whereof is hereby confessed, do hereby grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns or successor in trus t forever, all the following described lands and premises, situated in the city of Chicago, county of Cook, and State of Illinois, to wit:

All of that part of the west half of the southeast quarter of section twenty-three (23), in township thirty-nine (39) north, of
393 range thirteen (13) east, of the third (3d) principal meridian, which lies south of the southwestern plank road (or Ogden avenue, so-called,) except the west fifteen (15) acres, and except the east ten (10) acres, and except also the right of way of the Chicago, Burlington, and Quincy railroads; said tract containing fifteen and nine hundred and twenty-two thousandths ($15\frac{9\,2\,2}{1\,0\,0\,0}$) acres, more or less, measuring to the center of the streets and avenues on either side.

[$1.50 internal revenue stamps cancelled.]

This deed of trust being given to secure the payment of a part of the purchase money of the above-described premises.

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging to the said party of the second part, his heirs and assigns forever. In trust nevertheless, that in case default be made in the payment of either of the indebtednesses or moneys aforesaid, secured by this instrument, whether for principal or interest, on the day on which the same or either therof, shall become due and payable, then to sell and dispose of the said premises, and all the right, title, benefit, and equity of redemption of said party of the first part, their heirs or assigns therein, at public auction, at the north door of
394 the court house, in the city of Chicago, in the State of Illinois, or on said premises, as may be specified in the notice of such sale, for the highest and best price the same will bring in cash, at least twenty (20) days' public notice having been previously given of the time and place of such sale, by advertisement in one of the newspapers at that time published in said city of Chicago; and to make, execute, and deliver to the purchaser or purchasers at such sale good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds or avails of such sale and the purchase money paid thereon after first paying all costs of such advertising and sale, including commissions at the rate of two and one half per cent., and all other expenses of this trust, including all moneys advanced for insurance, taxes, assessments, or other liens, with the interest thereon, to pay the principal of said notes, whether due and payable by the terms thereof or not, and the interest due on said notes up to the time of such sale, rendering the overplus, if any, unto the said party of the first part, their legal representatives or assigns, on reasonable request, and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the
395 application of the purchase money, which sale or sales so made shall be a perpetual bar, both in law and in equity, against the said party of the first part, their heirs and assigns, and

all other persons claiming the premises aforesaid, or any part thereof, by, from, through, or under said party of the first part, or any of them.

And in addition to the efficacy which such deed or deeds of conveyance might otherwise have in evidence as a muniment or muniments of title, (and not in limitation or restriction of such efficacy,) such deed or deeds shall also, as against the party of the first part, their heirs and assigns, and in favor of the party of the second part, his heirs and assigns, or the grantee or grantees named in such deed or deeds, his or their heirs and assigns, when produced in any court of law or equity, or elsewhere, be and be taken as good and sufficient *prima facie* evidence of the due and legal execution in all respects of the power of sale above granted, and of the due observance of all preliminaries and conditions necessary to the validity of such sale and of such deed or deeds, whether such observance thereof shall be in such deed or deeds specially or in detail recited or not, and any and all recitals which shall be made in such
396 deed or deeds, shall, in any court of law or equity, or elsewhere, be, and be held to be, as against the party of the first part, their heirs and assigns, good and sufficient *prima facie* evidence of the truth of the matters and things therein recited.

The said party of the first part hereby covenant, declare, and agree, that in case default shall be made in the payment of any or either of the indebtednesses or moneys aforesaid, whether for principal or interest, or of taxes hereinafter mentioned, on the day on which the same, or either thereof, shall become due and payable, or in the procuring and assigning of the policies of insurance as is hereinafter specified, then all and each of the moneys secured to be paid by this indenture shall, upon such default, become immediately due and payable, anything herein or in said promissory notes contained to the contrary notwithstanding.

And the said party to the first part, for the purpose of enabling said party of the second part to make an advantageous and judicious sale of said premises, do hereby authorize and empower him to adjourn said sale from time to time, on request of the legal holder of said notes, at the discretion of said party of the second part, and also to sell said premises entire, without division or in parcels,
397 as said party of the second part may think best.

And the said Henry J. Traver and Clarissa Ann, his wife, and Michael Traver and Mary Jane, his wife, party of the first part, hereby expressly waive and release any and all rights in respect of the above granted lands to them secured by the statutes of the said State of Illinois, relating to the alienation and exemption of homesteads.

And the said Henry J. Traver and Michael Traver, for themselves and their heirs, executors and administrators, covenant and agree to and with the said party of the second part, his successor in trust, hereinafter named, and their assigns, that at the time of the ensealing and delivery of these these presents they are well seized of said premises in fee-simple,and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form as afore-

said; that the same are free and clear of all liens and encumbrances whatsoever; that the said party of the first part will in due season pay all taxes and assesments on said promises, and exhibit once a year, on demand, receipts of the proper persons to said party of the second part, showing payment thereof, until the indebtedness
398 aforesaid shall be fully paid, and will keep all buildings that may at any time be on said premises during the continuance of said indebtedness, insured in such company or companies as the holder or holders of said notes may direct, for such sum or sums as such company or companies will insure for, not to exceed the amount of said indebtedness, and will assign, with proper consent of the insurers, the policy or policies of insurance to said party of the second part, as further security for the indebtedness aforesaid; and in case said party of the first part shall fail so to keep said buildings insured, and to pay said taxes and assessments, then the party of the second part shall have full right, power, and authority to pay the same, and the amount so paid shall constitute a part of the debt secured by this instrument, and upon sale of the land hereunder, shall, with the amount of said notes and interest, be paid to the holder of said notes, with interest thereon at the rate of ten per cent. per annum.

A reconveyance of said premises shall be made to said party of the first part, their heirs or assigns, at their expense, on full payment of the indebtedness aforesaid, and performance by them of the covenants and agreements herein made by the party of the first part.

399 And in case of the death, inability, or refusal to act of said party of the second part, then Hugh A. White, of Chicago, Cook county, Illinois, shall be, and he hereby is, appointed and made successor in trust to said party of the second part, under this deed, with like powers and authority, and said premises shall thereupon become vested in such successor in trust, for the uses and purposes aforesaid,

In witness whereof, the party of the first part have hereunto set their hands and seals on the day and year first above written.

HENRY J TRAVER. [SEAL.]
CLARISSA S. TRAVER. [SEAL.]
MICHAEL TRAVER. [SEAL.]
MARY JANE TRAVER. [SEAL.]

Signed, sealed, and delivered in the presence of—
GEO. B. SMITH.
THOMAS OGDEN.

[$20 internal revenue stamp cancelled.]

STATE OF OHIO, } *ss:*
Ashland County, }

I, George B. Smith, notary public in and for Ashland county and State aforesaid, do hereby certify that Henry J. Traver, who is personally known to me to be the real person whose name is subscribed to the foregoing trust deed, as having executed the same,

appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act and deed for the uses and purposes therein set forth.

400 And the said Clarissa A. Traver, wife of the said Henry J. Traver, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she being *being* by me fully informed of her rights under the homestead laws of the State of Illinois, acknowledged that she had freely and voluntarily executed the said instrument of writing and relinquished her dower and conveyed all other right, title, and interest, and also all her rights and advantages under and by virtue of all laws of said State of Illinois and by virtue of the laws of said State of Illinois relating to the alienation or exemption of homesteads in and to the lands and tenements therein mentioned, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal, this seventeenth day of day of April, A. D. one thousand eight hundred and seventy one.

[SEAL.] GEO. B. SMITH,
Notary Public

STATE OF ILLINOIS, }
Cook County, City of Chicago, } ss:

401 I, J. Lewis Lee, a notary public in and for the city of Chicago, in said county and State, do hereby certify that Michael Traver & Mary J. Traver, who are personally known to me to be the same persons whose names are subscribed to the foregoing warranty deed, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

And the said Mary J. Traver, wife of the said Michael Traver, having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her rights under the homestead laws of the State of Illinois, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of the State of Illinois relating to the exemption of homesteads, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal, this thirteenth day of May, A. D. 1871,

402 [SEAL.] J. LEWIS LEE,
Notary Public, City of Chicago.

THE STATE OF OHIO, }
Ashland County, } *ss:*

I, W. C. Frazee, clerk of the court of common pleas within and for the county and State aforesaid, do hereby certify that at the date of the certificate of proof or acknowledgment, to which this is annexed, the said Geo. B. Smith was a notary public in and for said county, and duly authorized by the laws of this State to take the same; and that I am acquainted with his handwriting, and verily believe that the signature to said acknowledgment is genuine; and do further certify that the said instrument and the acknowledgment thereof are executed according to the existing laws of the State of Ohio.

In testimony whereof, I have hereunto set my signature and affixed the seal of our said court, at Ashland, this 17th day of April, A. D. 1871.

[SEAL.] W. C. FRAZEE, *Clerk.*

(Endorsed:) State of Illinois, Cook county, *ss.* No. 97477. Filed for record in the recorder's office of Cook county aforesaid,
403 May 19, A. D. 1871, and recorded in book 655 of deeds, page 517. Norman T. Gassette, clerk of the circuit court of said county, and *ex officio* recorder.

404 EXHIBIT "J."—H. W., *Master.*

Release Deed.

KNOW all men by these presents, that we, Enos Ayres, trustee, of Chicago, Illinois, and John Dickson, holder of the notes secured by the trust deed herein mentioned, of the city of Cincinnati and State of Ohio, for and in consideration of one dollar, and for other good and valuable consideration, the receipt whereof is hereby confessed, do hereby grant, bargain, remise, convey, release, and quit-claim unto Henry J. Traver and Michael Traver, of the county of Cook and State of Illinois, all the right, title, interest, claim, or demand whatsoever we may have acquired in, through, or by a certain trust deed bearing date the nineteenth day of December, A. D. 1870, and recorded in the recorder's office of Cook county, in the State of Illinois, in Book 655 of Deeds, page 517, to a part of the premises therein described as follows, to wit: The portion of said premises hereby released being known and described as block three (3), in Traver's subdivision of that part of the west half of the southeast quarter of section twenty-three (23), township thirty-nine (39) north, range thirteen (13) east, of the third principal meridian, which lies south of the southwestern plank road (or Ogden avenue), except the west fifteen (15) acres, and the east ten (10) acres, and
405 except the right of way of the Chicago, Burlington and Quincy Railroad, according to plat of subdivision recorded in the recorder's office of said Cook county on the 6th day of May, A. D. 1872, in Book one (1) of Maps, page 59; this release is made upon the express condition that it shall in no manner effect or im-

pair the lien of said trust deed on the remainder of the premises therein described not hereby released; together with all the appurtenances and privileges thereunto belonging or appertaining.

Witness our hands and seals, this eighth day of February, A. D. 1873.

ENOS AYRES, *Trustee.* [SEAL.]
JOHN DICKSON. [SEAL.]

STATE OF OHIO, *County of Hamilton,* } *ss:*

I, Flamen Ball, Jr., a notary public in and for the said county, in the State aforesaid, do hereby certify that John Dickson is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

406 Given under my hand and notarial seal, this eighth day of February, A. D. 1873.

[SEAL.] FLAMEN BALL, JR.,
Notary Public, Ham. Co., O.

STATE OF ILLINOIS, *Cook County,* } *ss:*

I, William O. Cole, a notary public in and for the city of Chicago, in said county, in the State aforesaid, do hereby certify that Enos Ayres, who is personally known to me to be the same person whose name is subscribed to the annexed instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of homestead.

Given under my hand and notarial seal, this thirteenth day of February, A. D. 1873.

[SEAL.] WILLIAM O. COLE,
Notary Public.

(Endorsed:) State of Ills., county of Cook, *ss.* No. 84023 This instrument was filed for record in the recorder's office of Cook county, aforesaid, on the 14th day of Feb'y, A. D. 1873, at
407 —— o'clock —— m., and recorded in Book 214 of Records, on page 156, Feb. 24th, A. D. 1873.

JAS. STEWART, *Recorder.*

408 EXHIBIT "K."—H. W., *Master.*

Release Deed.

Know all men by these presents, that I, Enos Ayres, trustee, & I, Oswell A. Bogue, legal holder of the unpaid notes, of the county of Cook and State of Illinois, for and in consideration of one dollar, to us in hand paid, and for other good and valuable considerations,

the receipt whereof is hereby confessed, do hereby grant, bargain, remise, convey, release, and quit-claim unto Henry J. Traver, Clarissa A. Traver, Michael Traver, and Mary Jane Traver, of the county of Cook, and State of Illinois, all the right, title, interest, claim, or demand whatsoever we may have acquired in, through, or by a certain indenture of trust deed, bearing date the nineteenth (19th) day of December, A. D. 1870, and recorded in the recorder's office of Cook county, and State of Illinois, in Book 655 of Deeds, page 517, so much of the premises therein described, to wit: That part of the premises now known as block two (2), in Traver's subdivision of the east fifteen and ninety-two one-hundredths ($15\frac{92}{100}$) acres of the west thirty and ninety-two one-hundredths ($30\frac{92}{100}$) acres of that part of the southeast quarter of section twenty-three (23), town. thirty-nine (39) north, of range thirteen (13) east, of the third (3rd) principal meridian, lying south of Ogden avenue, or the southwestern plank road, situated in the county of Cook, and
409 State of Illinois.

This release is not to effect the balance of the property covered by the above-mentioned trust deed, which is still held for notes now remaining unpaid.

And which said trust deed was made to secure four (4) certain promissory notes, bearing even date with said deed, for the sum of twenty-one thousand four hundred ninety-four dollars and seventy cents.

Witness our hands and seals, this twenty-ninth (29th) day of January, A. D. 1875.

ENOS AYRES, *Trustee.* [SEAL.]
OSWELL A. BOGUE, [SEAL.]
Legal Holder of Notes.

STATE OF ILLINOIS, } *ss:*
Cook County, }

I, William Pallin, a notary public in and for said county, in the State aforesaid, do hereby certify that Enos Ayres and Oswell A. Bogue, personally known to me as the same persons whose names are subscribed to the foregoing deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing, as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal, this 29th day of January, A. D. 1875.

410 [SEAL.] WILLIAM PALLIN,
Notary Public.

Endorsed: State of Ills., county of Cook, *ss.* 14712. Filed for record the 19th day of Feb., A. D. 1875, at the hour of 12 o'clock m., and duly recorded in Book 419 of Records, page 384. Jas. Stewart, recorder.

411 *Trust Deed.*

This indenture, made this twenty-eight (28) day of December, in

the year of our Lord one thousand eight hundred and seventy-two (1872), between James C. Hyde, of the city of Chicago, county of Cook and State of Illinois, party of the first part, and Henry L. Hammond, of the same place, the party of the second part:

Witnesseth, That whereas the said James C. Hyde has executed one certain promissory note, bearing even date herewith, payable to the order of Michael Traver, in the sum of six thousand dollars ($6,000), payable three (3) years after date thereof, at the Union National Bank, Chicago, with interest at eight (8) per cent. per annum, payable semi-annually, as evidenced by six (6) certain interest coupon notes of same date, executed by said Hyde, payable to the order of said Traver, in the sum of two hundred and forty dollars ($240) each, due and payable, respectively, in six (6), twelve (12), eighteen (18), twenty-four (24), thirty (30), and thirty-six (36) months after date, at the Union National Bank, Chicago, and with interest on both said principal and interest notes at ten per cent. per annum after due.

This trust deed, with the notes herein mentioned, is given by the party of the first part to secure the unpaid part of the purchase price of the premises herein described.

412 And whereas the said party of the first part is desirous of securing the payment of said promissory notes and interest that may accrue thereon:

Now, therefore, the said party of the first part, in consideration of the premises, and for the purposes aforesaid, and in the further consideration of one dollar to him in hand paid by said party of the second part, the receipt whereof is hereby confessed, hath, and doth hereby, grant, bargain, sell, and convey unto the said party of the second part, his heirs, and assigns, all the following-described lands and premises, situate in the city of Chicago, county of Cook and State of Illinois, to wit:

Lots numbered ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), and thirty-nine (39), all in block number two (2), in Traver's subdivision of the east fifteen $\frac{92}{100}$ ($15\frac{92}{100}$) acres of the west thirty $\frac{92}{100}$ ($30\frac{92}{100}$) acres of that part of the southeast quarter ($\frac{1}{4}$) of section number twenty-three (23), of township No. thirty-nine (39) north, of range thirteen (13) east of the third (3d) principal meridian, lying south of Ogden avenue or Southwestern Plank road.

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, to the said party of the second part, his heirs, and assigns, forever.

413 In trust nevertheless, that in case of default in the payment of the said notes, or any part thereof, either interest or principal, according to the tenor thereof, then on application

of the legal holder of said notes to sell and dispose of the said premises, and all the right, title, benefit, and equity of redemption of the said party of the first part, his heirs and assigns therein, at public auction, at the north door of the court-house of Cook county, for the time being, in the city of Chicago, in the State of Illinois, or on said premises, as may be specified in the notice of such sale, for the highest and best price the same will bring in cash, at least ten (10) days public notice having been previously given of the time and place of such sale by advertisement in one of the newspapers at that time published in said city of Chicago, and to make, execute, and deliver to the purchaser, or purchasers, at such sale, good and sufficient deed, or deeds, of conveyance for the premises sold, and out of the proceeds of such sale paid thereon after first paying all costs of advertising and sale, including commissions such as are allowed by law to sheriffs on sale of real estate on execution, and all other expenses of this trust, including all moneys advanced for taxes or other liens and assessments, with the interest thereon, to pay the principal of said notes whether due and payable by the terms thereof or not, and interest due on the said note up to the time of such sale, rendering the overplus (if any) unto the said James C. Hyde, party of the first part, his legal representatives or assigns, on reasonable request, and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money, which sale or sales shall be a
414 perpetual bar both in law and equity against the said party of the first part, his heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through, or under said party of the first part, or any of them.

It is made an express condition of the foregoing deed and of the trusts and powers therein created and established, that in case of default in the payment of the indebtedness above specified when due or the interest to accrue thereon when the same shall be payable, or in case of a breach in the performance of any of the covenants or agreements foregoing, to be kept by the party of the first part herein, then, at the option of the legal holder of said indebtedness, the same shall become due absolutely at once and payable without notice of such election, and the party of the second part herein shall, in that case, execute the trusts hereby created under the powers of this deed to make the amount due on said indebtedness, with costs, fees, and expenses as if said indebtedness had matured by lapse of time.

And in consideration of the money paid as aforasaid to the said party of the first part, and in order to create a first lien and incumbrance on said premises under this deed for the purpose aforesaid, and carry out the foregoing specific application of the proceeds of any sale that may be made by virtue hereof, the said party of the first part doth hereby release and and waive all right under, and benefit of, the exemption and homestead laws of the State of Illinois in and to the lands and premises aforesaid, and the proceeds of sale thereof, and agree to surrender up possession thereof to the
415 purchaser or purchasers at such sale peaceably on demand.

And the said party of the first part, for the purpose of enabling the said party of the second part to make an advantageous and judicious sale of said premises, doth hereby authorize and empower him to adjourn said sale from time to time on request of the legal holder of said notes, at the discretion of said party of second part, and also to sell said premises entire, without division or in parcels, as said party of the second part may think best.

And if for any cause it shall become necessary to foreclose this instrument by suit at law or in chancery, then the court may allow reasonable attorney's or solicitor's fees to be taxed and paid as part of the costs of such proceedings.

And the said James C. Hyde, for himself and his heirs, executors, and administrators, covenants and agrees to and with the said party of the second part, his successor in trust hereinafter named, and their assigns, that at the time of the ensealing and delivery of these presents he is well seized of said premises in fee-simple, and hath good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid; that the same are free and clear of all liens and encumbrances whatsoever; that the said party of the first part will in due season pay all taxes and assessments on said premises, and exhibit once a year, on demand, receipts of the proper persons to said party of the second part, showing payment thereof, until the indebtedness aforesaid shall be fully paid, and will keep all buildings that may at any time be on
416 said premises during the continuance of said indebtedness insured in such company or companies as the holder or holders of said note may direct for such sum or sums as such company or companies will insure for, not to exceed the amount of said indebtedness, except at the option of the said part of the first part, and will assign, with proper consent of the insurers, the policy or policies of insurance to said party of the second part as further security for the indebtness aforesaid.

A reconveyance of said premises to be made to said James C. Hyde, party of the first part, his heirs or assigns, at his expense, on full payment of the indebtedness aforesaid and performance of the covenants and agreements made herein by the party of the first part.

And said party of the first part, for himself and his heirs and assigns, doth further hereby covenant and agree to and with said party of the second part and his assigns that in case of a sale and conveyance as aforesaid of said premises, the deed and deeds of conveyance made by said party of the second part under such sale shall be *prima facie* evidence of the due compliance with and performance of the terms, conditions, and requirements of this deed of trust by the party of the second part in advertising and making such sale and conveyance to the extent of the recitals contained in such deed or deeds.

And in case of the death, absence, inability, or refusal to act of said party of the second part, then Oswell A. Bogue, of the city of Chicago, shall be, and he hereby is, appointed and made a successor in trust to said party of the second part under this deed, with

417 like powers and authority, and said premises shall thereupon become vested in such successor in trust for the uses and purposes aforesaid.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

JAMES C. HYDE. [SEAL.]

STATE OF ILLINOIS, }
County of Cook, City of Chicago, } ss:

I, J. Lewis Lee, a notary public for and residing in said city of Chicago in the county and State aforesaid, do hereby certify that James C. Hyde, who is personally known to me as the person whose name is subscribed to the foregoing deed of trust, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the same as his free and voluntary act for the uses and purposes therein set forth, and expressly waived and released all right, benefit, and exemption under any and all exemption and homestead laws,

Given under my hand and notarial seal, this sixth day of January, in the year eighteen hundred and seventy-three, 1873.

[SEAL.] J. LEWIS LEE,
Notary Public, City of Chicago.

(Endorsed:) Deed of trust. James C. Hyde to Henry L.
418 Hammond. State of Illinois, Cook county. No. 77323. This instrument was filed for record in the recorder's office of Cook county, aforesaid, on the 7 day of Jan'y, A. D. 1873, at the hour of —— o'clock — m., and duly recorded in book 180 of records, page 91, Jan'y 10, 1873. James Stewart, recorder of Cook county.

419 $6,000. CHICAGO, *December* 28, 1872.

Three years after date, value received, I promise to pay to the order of Michael Traver, at Union National Bank, Chicago, six thousand dollars with interest on the same at the rate of eight per cent. per annum, payable semi-annually, as evidenced by six interest coupons hereto attached, according to the tenor of a certain trust deed bearing even date herewith, given by James C. Hyde to Henry L. Hammond, and with interest at ten per cent. per annum after due.

Due Dec. 28, 1872. JAMES C. HYDE.

(Endorsed:) Pay C. A. Richardson, guardian. Michael Traver.

420 *Trust Deed.*

This indenture, made this twenty-eighth (28) day of December, in the hear of our Lord one thousand eight hundred and seventy-two (1872), between James C. Hyde, of the city of Chicago, county of Cook, and State of Illinois, party of the first part, and Henry L. Hammond, of the same place, the party of the second part, witnesseth: That whereas the said James C. Hyde has executed one certain promissory note, bearing even date herewith, payable to the

order of Michael Traver, in the sum of four thousand dollars ($4,000), payable in three (3) years after date thereof, at the Union National Bank, Chicago, with interest at eight (8) per cent. per annum, payable semi-annually, as evidenced by six (6) certain interest coupon notes of same date, executed by said Hyde, payable to the order of said Traver, in the sum of one hundred and sixty ($160) dollars each, due and payable respectively in six (6), twelve (12), eighteen (18), twenty-four (24), thirty (30), and thirty-six (36) months after date, at the Union National Bank, Chicago, and with interest on both said principal and interest notes at ten per cent. per annum after due.

This trust deed, with the notes herein mentioned, is given by the party of the first part to secure the unpaid part of the purchase price of the premises herein described.

421 And whereas the said part- of the first part is desirous of securing the payment of said promissory notes and interest that may accrue thereon—

Now, therefore, the said party of the first part, in consideration of the premises, and for the purposes aforesaid, and in further consideration of one dollar to him in hand paid by said party of the second part, the receipt whereof is hereby confessed, hath and doth hereby grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, all the following described lands and premises, situate in the city of Chicago, county of Cook, and State of Illinois, to wit:

Lots numbered one (1), two (2), three (3), four, (4), five (5), six (6), seven (7), eight (8), nine (9), forty (40), forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five (45), forty-six, (46), forty-seven (47), and forty-eight (48), all in block two (2), of Traver's subdivision of the east fifteen $\frac{92}{100}$ ($15\frac{92}{100}$) acres of the west thirty $\frac{92}{100}$ ($30\frac{92}{100}$) acres of that part of the southeast quarter ($\frac{1}{4}$) of section twenty-three (23), of township thirty-nine (39) north, of range thirteen (13) east, of the third (3d) principal meridian, lying south of Ogdon avenue or Southwestern Plank road.

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, to the said party of the second part, his heirs and assigns forever. In trust nevertheless, that in case of default in the payment of the said notes, or any part thereof, either interest or principal, according to the tenor thereof, then on application of the legal holder of said notes to sell and dispose of the said premises, and all the right, title, benefit, and equity of redemption of the said

422 party of the first part, his heirs and assigns therein, at public auction, at the north door of the court house of Cook county, for the time being in the city of Chicago, in the State of Illinois, or on said premises as may be specified in the notice of such sale for the highest and best price the same will bring in cash, at least ten (10) days' public notice having been previously given of the time and place of sale by advertisement in one of the newspapers at that time published in said city of Chicago, and to make, execute, and deliver to the purchaser or purchasers at such sale good and suffi-

cient deed or deeds of conveyance for the premises sold, and out of the proceeds of such sale paid thereon, after first paying all costs of advertising and sale, including commissions, such as are allowed by law to sheriffs on sale of real estate on execution, and all other expenses of this trust, including all moneys advanced for taxes or other liens and assessments, with the interest thereon, to pay the principal of said notes, whether due and payable by the terms thereof or not, and interest due on the said note up to the time of such sale, rendering the overplus, if any, unto the said James C. Hyde, party of the first part, his legal representatives or assigns, on reasonable request, and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money, which sale or sales so made shall be a perpetual bar, both in law and in equity, against the said party of the first part, his heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through, or under said party of the first part, or any of them.

423 It is made an express condition of the foregoing deed and of the trusts and powers therein created and established, that in case of default in the payment of the indebtedness above specified, when due, or the interest to accrue therein, when the same shall be payable, or in case of a breach in the performance of any of the covenants or agreements foregoing, to be kept by the party of the first part herein, then at the option of the legal holder of said indebtedness the same shall become due absolutely at once, and payable without notice of such election, and the party of the second part herein shall in that case execute the trusts hereby created under the powers of this deed to make the amount due on said indebtedness, with costs, fees and expenses, as if said indebtedness had matured by lapse of time.

And in consideration of the money paid as aforesaid to the party of the first part, and in order to create a first lien and incumbrance on said premises under this deed for the purpose aforesaid, and carry out the foregoing specific application of the proceeds of any sale that may be made by virtue hereof, the said party of the first part doth hereby release and waive all right under and benefit of the exemption and homestead laws of the State of Illinois, in and to the lands and premises aforesaid, and the proceeds of sale thereof, and agree to surrender up possession thereof to the purchaser or purchasers at such sale peaceably on demand.

And the said party of the first part, for the purpose of enabling the said party of the second part to make an advantageous and judicious sale of said premises, doth hereby authorize and empower him to adjourn said sale from time to time, on request of the

424 legal holder of said notes, at the discretion of said party of second part, and also to sell said premises entire without division, or in parcels as said party of the second part may think best.

And if for any cause, it shall become necessary to foreclose this instrument by suit at law or in chancery then the court may allow

reasonable attorney's or solicitor's fees to be taxed and payed as part of the costs of such proceeding.

And the said James C. Hyde, for himself and his heirs, executors, and administrators, covenants and agrees to, and with the said party of the second part, his successor in trust hereinafter named and their assigns, that at the time of the enscaling and delivery of these presents, he is well sized of said premises in fee-simple, and hath good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid; that the same are free and clear of all liens and encumbrances whatsoever; that the said party of the first part will, in due season, pay all taxes and assessments on said premises, and exhibit once a year, on demand, receipts of the proper persons, to said party of the second part, showing payment thereof until the indebtedness aforesaid shall be fully paid, and will keep all buildings that may at any time be on said premises during the continuance of said indebtedness insured in such company or companies as the helder or holders of said note may direct, for such sum or sums as such company or companies will insure for, not to exceed the amount of said indebtedness, except at the option of the said party of the first part, and will assign with proper consent of the insurers the policy or policies of insurance to said party of the second part, as further security for
425 the indebtedness aforesaid. A reconveyance of said premises to be made to said James C. Hyde, party of the first part, his heirs or assigns, at his expense, on full payment of the indebtedness aforesaid, and performance of the covenants and agreements made herein by the party of the first part.

And said party of the first part for himself and his heirs and assigns doth further hereby covenant and agree to and with said party of the second part and his assigns, that in case of a sale and conveyance as aforesaid of said premises, the deed and deeds of conveyance made by said party of the second part under such sale shall be *prima facie* evidence of the due compliance with and performance of the terms, conditions, and requirements of this deed of trust by the party of the second part in advertising and making such sale and conveyance to the extent of the recitals contained in such deed or deeds.

And in case of the death, absence, inability, or refusal to act of said party of the second part, then Oswell A. Bogue, of the city of Chicago, shall be and he hereby is appointed and made a successor in trust to said party of the second part under this deed with like power and authority, and said premises shall thereupon become vested in such successor in trust for the uses and purposes aforesaid.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

JAMES C. HYDE. [SEAL.]

426 STATE OF ILLINOIS, }
County of Cook, City of Chicago, } ss:

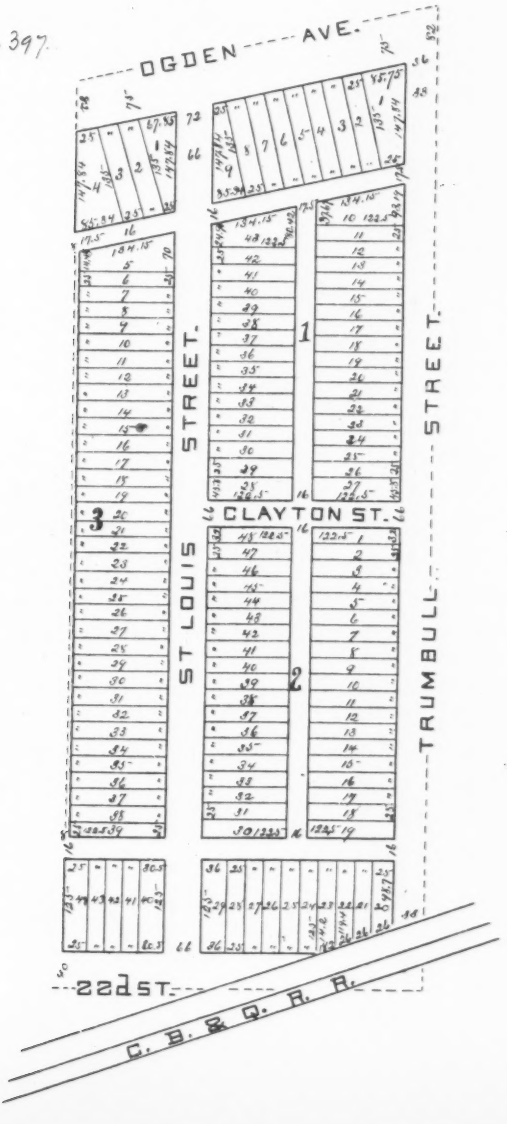
I, J. Lewis Lee, a notary public for and residing in said city

"Exhibit A" to Deposition of Henry J. Travers

TRAVERS'

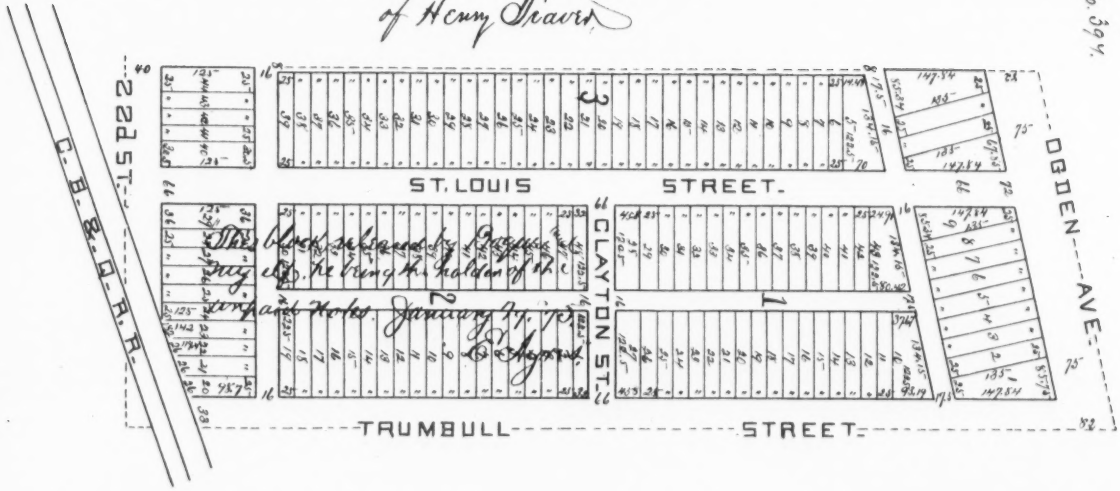
Subdivision of the E. 15 3/4 acres of the W. 30 1/2 acres of that part of the S.E. 1/4 of Sec. 23-39-13 lying south of Ogden Avenue or S.W. Plank Road.

No. 397.



"Exhibit 'B' to Deposition of Henry Shaver"

No. 394.



of Chicago, in the county and State aforesaid, do hereby certify, that James C. Hyde who is personally known to me as the person whose name is subscribed to the foregoing deed of trust, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the same as his free and voluntary act, for the uses and purposes therein set forth, and expressly waived and released all right, benefit, and exemption under any and all exemption and homestead laws.

Given under my hand and notarial seal, this sixth day of January, in the year eighteen hundred and seventy-three, (1873.)

[SEAL.] J. LEWIS LEE,
Notary Public, City of Chicago.

(Endorsed): Deed of trust. James C. Hyde to Henry L. Hammond. State of Illinois, Cook county, ss. No. 77322. This instrument was filed for record, in the recorder's office of Cook
427 county aforesaid, on the 7 day Jan'y, A. D. 1873, at the hour of —— o'clock —. m., and duly recorded in Book 184 of Records, page 303, Jan. 15, A. D. 1873. James Stewart, recorder of Cook county.

427½ $4,000 CHICAGO, *December 28th*, 1872.

Three years after date, value received, I promise to pay to the order of Michael Traver, at Union National Bank, Chicago, four thousand dollars, with interest on the same, at the rate of eight per cent. per annum, payable semi-annually, as evidenced by six interest coupons hereto attached, according to the tenor of a certain trust deed bearing even date herewith, given by James C. Hyde to Henry L. Hammond, and with interest at ten per cent. per annum after due.

Due Dec. 28, 1875. JAMES C. HYDE.

(Endorsed:) Pay C. A. Richardson, guardian. Michael Traver.

430 "EXHIBIT C."—H. WALLER, MASTER.

Quit-Claim Deed.

[Fifty-cent internal revenue stamp, cancelled.]

This indenture, made the twentieth (20th) day of December, in the year of our Lord one thousand eight hundred and seventy-two, 1872, between Henry J. Traver and Clarissa Ann Traver, his wife, of Cook county, State of Illinois, parties of the first part, and Michael Traver of the city of Chicago, Cook county, State of Illinois, party of the second part—

Witnesseth, that the said party of the first part, for and in consideration of one hundred ($100) dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part, forever released and discharged therefrom, have remised, released, sold, conveyed, and quit-claimed, and by these presents do remise, release, sell, convey, and quit-claim unto the said party of the second part, his heirs and

assigns forever, all the right, title, interest, claim, and demand which the said party of the first part have in and to the following described lots, pieces, or parcels of land, to wit: Lots numbered one (1), two (2), three (3), four (4), five (5), six (6), seven (7), thirty-four (34), forty-one (41), forty (40), forty-two (42), and forty-three (43), all in block three (3), and lots numbered one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9),
431 forty (40), forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five (45,) forty-six (46), forty-seven (47,) and forty-eight (48), in block two (2), of Traver's subdivision of the east fifteen $\frac{92}{100}$ ($15\frac{92}{100}$) acres of the west thirty $\frac{92}{100}$ ($30\frac{92}{100}$) acres of that part of the southeast quarter, section twenty-three (23), township thirty-nine (39) north, range thirteen (13) east, of the third (3d) principal meridian, in Cook county, State of Illinois, lying south of Ogden avenue, or southwestern plank road.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining, and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

And the said Henry J. Traver and Clarissa Ann Traver, party of the first part, hereby expressly waives, releases, and relinquishes unto the said party of the second part, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above described premises, and each and every part thereof, which is given by or results from all the laws of this
432 State pertaining to the exemption of homesteads. And the said party of the first part, for themselves and their heirs, executors, and administrators, do covenant, promise, and agree to and with the said party of the second part, his heirs, executors, administrators and assigns, that he hath not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby, or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged, or encumbered, in any way or manner whatsoever.

In witness whereof, the said party of the first part hereunto set his hand and seal the day and year above written.

HENRY J. TRAVER. [SEAL.]
CLARISSA A. TRAVER. [SEAL.]

STATE OF ILLINOIS, } ss:
Du Page County, }

I, Luther L. Hiatt, a notary public in and for said county, in the State aforesaid, do hereby certify that Henry J. Traver and Clarissa Ann Traver, his wife, who are personally known to me as the same persons whose names are subscribed to the foregoing instrument of writing, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of
433 writing as their free and voluntary act for the uses and pur-

poses therein set forth. And the said Clarissa Ann Traver, wife of the said Henry J. Traver, having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the land and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal, this third day of January, A. D. 1873.

[SEAL.] LUTHER L. HIATT,
Notary Public.

(Endorsed:) State of Illinois, Cook county, ss: 77321. The within deed was filed for record in the recorder's office of Cook county, on the 7 day of Jan'y, A. D. 1873, at —— o'clock — m., and duly recorded in Book 113 of Records, on page 227, Jan. 10, A. D. 1873. Jas. Stewart, recorder of Cook county. Entered. Joseph Pollak, county clerk.

434 EXHIBIT "D."—H. W., *Master.*

Deed.

[Internal revenue stamp, cancelled.]

This indenture, made this second day of September, in the year of our Lord one thousand eight hundred and seventy-two, between Henry J. Traver and Clarissa A. Traver, his wife, of Wheaton, Du Page county, Ill., and Michael Traver and Mary J. Traver, his wife, of the city of Chicago, county of Cook, and State of Illinois, parties of the first part, and Charles M. Earl, (bachelor,) of Chicago, Cook county, Ill., of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of fifteen thousand dollars, $15,000 *dollars*, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said party of the second part, his heirs and assigns, all the following described lots, pieces, or parcels of land, situated in the county of Cook, and State of Illinois, to wit: Lots number ten (10) to thirty-nine (39), in block number two (2), (both inclusive), of Traver's subdivision of the east $15\frac{92}{100}$ acres, of the west $30\frac{92}{100}$ acres of that part of the S. E. $\frac{1}{4}$ of section twenty-three (23), 39-13 lying south of Ogden ave., or S. W. plank road.

435 Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever, of the said party of the first part,

either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances: to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

And the said Henry J. Traver & wife and Michael Traver & his wife, parties of the first part, hereby expressly waives, releases, and relinquishes unto the said party of the second part, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatsoever in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of the State of Illinois, pertaining to the exemption of homesteads.

And the said Henry J. Traver & Michael Traver & their wives, party of the first part, for themselves and their heirs, executors, and administrators, doth covenant, grant, bargain, and agree, to
436 and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents they are well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law, and in fee-simple, and hath good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and encumbrances of what kind or nature soever; and the above bargained premises in the quiet and peaceful possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

HENRY J. TRAVER. [SEAL.]
CLARISSA A. TRAVER. [SEAL.]
MICHAEL TRAVER. [SEAL.]
MARY JANE TRAVER. [SEAL.]

STATE OF ILLINOIS, } ss:
Du Page County, }

I, Luther L. Hiatt, a notary public in and for said Du
437 Page county, in the State aforesaid, do hereby certify that Henry J. Traver and Clarissa A. Traver, personally known to me as the same persons described in and whose names are subscribed to the foregoing instrument of writing as having executed the same, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth. And the said Clarissa A. Traver, wife of the said Henry J. Traver, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully

made known and explained to her, and she also by me being fully informed of her rights under the homestead laws of the State of Illinois, acknowledged that she had freely and voluntarily executed the said instrument and relinquished her dower, and all her right, title, and interest in and to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of the State of Illinois relating to the exemption of homesteads, without compulsion of her said husband, and that she does not wish to retract the same.

438 Given under my hand and notarial seal, this tenth day of September, A. D. 1872.

[SEAL.] LUTHER L. HIATT,
Notary Public.

STATE OF ILLINOIS, }
Cook County, City of Chicago, } *ss:*

I, George W. Parent, a notary public in and for said city and county, in the State aforesaid, do hereby certify that Michael Traver and Mary Jane Traver, his wife, who are personally known to me as the persons whose names are subscribed to the within warranty deed as having executed the same, appeared before me this

439 day in person, and acknowledged that *he* signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth, and thereby conveyed all their right, title, and interest in and to the premises described in said warranty deed, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws so called.

And the said Jane Traver, wife of the said Michael Traver, having been by me examined separate and apart, and out of the hearing of her said husband, and the contents and meaning of the said warranty deed having been by me made known and fully explained to her, together with all her rights and privileges under the homestead exemption laws, so called, of the State of Illinois, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower and all right, title, and interest to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so called, without the compulsion of her said husband, and that she does not wish to retract the same.

440 Given under my hand and notarial seal, this twelfth day of September, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.] GEO. W. PARENT.
Notary Public.

Entered—
G. W. WHEELER,
County Clerk, pro tem.

No. 55705. Filed for record Sept. 12th, A. D. 1872.
NORMAN T. GASETT, *Recorder.*

STATE OF ILLINOIS, }
County of Cook, } ss:

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 12th day of September, A. D. 1872, as document No. 55705, and recorded in Book 139 of Records, at page 90.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Chicago, this twentieth (20) day of February, A. D. 1878.

[SEAL.] JAS. W. BROCKWAY,
Recorder.

441 EXHIBIT "F."—H. W., *Master.*

Warranty Deed.

This indenture, made this nineteenth (19th) day of December, in the year of our Lord one thousand eight hundred and seventy (1870,) between John Dickson and Mary Ann, his wife, of Cincinnati, Hamilton county, and State of Ohio, party of the first part, and Henry J. Traver, of Wadsworth, Medina county, and State of Ohio, and Michael Traver, of Chicago, Cook county, and State of Illinois, party of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of twenty-three thousand eight hundred and eighty-three (23,883) dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, convey, alien, and confirm unto the said party of the second part, and to their heirs and assigns forever, all the following described lot, piece, or parcel of land, situate in the county of Cook and State of Illinois, and known and described as follows, to wit:

All that part of the west half of the southeast quarter of section twenty-three (23) in township thirty-nine (39) north, of range
442 thirteen (13) east, of the third (3d) principal meridian, which lies south of the southwestern plank road, (or Ogden avenue, so called,) except the west fifteen (15) acres, and except the east ten (10) acres, and except also the right of way of the Chicago, Burlington, and Quincy railroad. Said tract containing fifteen and nine hundred and twenty-two thousandths ($15\frac{9}{1000}$) acres, more or less, measuring to the center of the streets and avenues on either side.

[U. S. Internal Revenue Stamps. Cancelled. 24 dollars.]

Together with all and singular, the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in

law or equity, of, in, and to the above bargained premises, with the hereditaments and appurtenances. To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, their heirs and assigns, forever.

And the said John Dickson, party of the first part, for himself, his heirs, executors, and administrators, does covenant, grant,
443 bargain, and agree to and with the said party of the second part, their heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed, as of good, sure, perfect, absolute, and indefeasible estate of inheritance in law, in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind and nature soever; and the above bargained premises in the quiet and peaceful possession of the said party of the second part, their heirs and assigns, against all and every other person or person lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend. And the said John Dickson and Mary Ann, his wife, party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Illinois, providing for the exemption of homesteads from sale on execution or otherwise, and especially under the act entitled "An act to exempt homesteads from sale on execution," passed by the General Assembly of the State of Illinois, A.
444 D. 1851, and approved February 11, A. D. 1851, and an act entitled "An act to amend an act entitled 'an act to exempt homesteads from sale on execution,'" passed by said Assembly, A. D. 1857, and approved February 17, A. D. 1857.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

JOHN DICKSON. [SEAL.]
MARY ANN DICKSON. [SEAL.]

Signed, sealed, and delivered in presence of—
LEWIS G. BERNARD.
ROB. A. JOHNSTON.

STATE OF OHIO, } ss:
Hamilton County, City of Cincinnati, }

I, Robert A. Johnston, a notary public in and for said county, in the State aforesaid, do hereby certify that John Dickson and Mary Ann Dickson, his wife, who were personally known to me as the persons whose names are subscribed to the within warranty deed as having executed the same, appeared before me this day in person, and acknowled that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth, and thereby conveyed all their right,

title, and interest in and to the premises described in said
445 warranty deed, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so-called.

And the said Mary Ann Dickson, wife of the said John Dickson, having been by me examined separate and apart and out of the hearing of her said husband, and the contents and meaning of the said warranty deed having been by me made known and fully explained to her, together with all her rights and privileges under the homestead exemption laws, so-called, of the State of Illinois, acknowledged that she had freely and voluntarily executed the same and relinquished her dower, and all right, title, and interest to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so-called, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal, this eighteenth day of February, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] ROBERT A. JOHNSTON,
Notary Public, Ham. Co., Ohio.

THE STATE OF OHIO, }
Hamilton County, } *ss.:*

446 I, H. H. Tinker, clerk of the court of common pleas within and for said county of Hamilton, do hereby certify that Robert A. Johnston, whose name is signed to the certificate hereto attached, was, at the time of subscribing the same, a legally acting notary public in and for said county of Hamilton, duly commissioned and qualified, and that I am well acquainted with his handwriting, and believe his said signature to be genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at Cincinnati, this 18th day of February, A. D. 1871.

[SEAL.] H. H. TINKER,
Clerk H. C. C. P., O.
By EMIL HOFFMAN, *Deputy.*

[Internal Revenue Stamp. Cancelled. 5 cents.]

(Endorsed:) State of Illinois, Cook county. No. 97476. This instrument was filed for record on the 19 day of May, A. D. 1871, at the hour of 11 o'clock a. m., and duly recorded in Book 585 of Deeds, at page 385. Norman T. Gasette, recorder. State of Illinois, Cook county, *ss.* 16948. Refiled for record Mar. 8, A. D. 1872, at — o'clock — m., & recorded in Book 58 of Records, page 210. Norman T. Gasette, recorder.

447 EXHIBIT "G."—H. W., *Master.*

This indenture, made this twenty-eighth (28) day of December, in the year of our Lord one thousand eight hundred and seventy-two (1872), between Michael Traver and Mary J. Traver, his wife,

of the city of Chicago, in the county of Cook, and State of Illinois, party of the first part, and James C. Hyde, of the same city, county, and State, witnesseth: That the said party of the first part, for and in consideration of the sum of sixteen thousand dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, convey, alien, and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following described lots, pieces, or parcels of land situate in the county of Cook and State of Illinois, and known and described as follows, to wit: Lots numbered one (1), two (2), three (3), four (4), five (5), and six (6), seven (7), thirty-four (34), forty-one (41), forty (40), forty-two (42),
448 and forty-three (43), all in block three (3), and lots numbered one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), forty (40), forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five (45), forty-six (46), forty-seven (47) and forty-eight (48), in block two (2) of Traver's subdivision of the east fifteen $\frac{92}{100}$ ($15\frac{92}{100}$) acres of the west thirty $\frac{92}{100}$ ($30\frac{92}{100}$) acres of that part of the southeast quarter of section twenty-three (23), township thirty-nine (39) north, of range thirteen (13) east, of the third (3d) principal meridian, in Cook county, Illinois, lying south of Ogden avenue or Southwestern plank road.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above bargained premises, with hereditaments and appurtenances.

To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

449 And the said Michael Traver, party of the first part, for himself and his heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivering of these presents, he is well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasable estate of inheritance in law, in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same, in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, aliens, taxes, assessments, and incumbrances of what kind and nature soever; and the above bargained premises in all quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every other person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

And the said Michal Traver and Mary J. Traver, his wife,
450 party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statu-es of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise, and especially under the act entitled "An act to exempt homesteads from sale on execution, passed by the General Assembly of the State of Illinois, A. D. 1851, and approved February 11, A. D. 1851," and an act entitled "An act to amend an act entititled 'An act to exempt homesteads from sale on execution,'" passed by said Assembly A. D. 1857, and approved February 17, A. D. 1857.

In witness whereof the said party of the first [part] have *have* hereunto set their hands and seals the day and year first above written.

MICHAEL TRAVER. [SEAL.]
MARY JANE TRAVER. [SEAL.]

STATE OF ILLINOIS, }
Cook County, City of Chicago, } ss:

I, J. Lewis Lee, a notary public in and for the city of Chicago, in said county and State, do hereby certify that Michael Traver and Mary Jane Traver, who are personally known to me to be the same persons whose names are subscribed to the foregoing
451 warranty deed, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

And the said Mary Jane Traver, wife of the same Michael Traver, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her rights under the homestead laws of the State of Illinois, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of the State of Illinois relating to the exemption of homesteads, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notorial seal, this sixth day of January, A. D. 1873.

[SEAL.] J. LEWIS LEE,
Notary Public, City of Chicago.

452 Endorsed: State of Illinois, Cook county: No. 77325. This instrument was filed for record on the 7 day of January, A. D. 1873, at the hour of —— o'clock —— m., and duly recorded in Book 198 of Records, at page 422, Jan. 10th, A. D. 1873. James Stewart, recorder. Entered. Joseph Pollak, county clerk.

453 EXHIBIT "H."—H. W., *Master.*

This indenture, made this twenty-eighth day of December, in the year of our Lord one thousand eight hundred and seventy-two (1872), between Charles M. Earl and Mary A. Earl, his wife, of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and James C. Hyde of the same place, the party of the second part, witnesseth: That the said party of the first part for and in consideration of the sum of sixteen thousand dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents, do grant, bargain, sell, remise, release, convey, alien, and confirm unto the said party of the second part, and to his heirs and assigns forever all the following described lots, pieces, or parcels of land situate in the county of Cook, and State of Illinois, and known and described as follows, to wit: Lots numbered ten (10) to thirty-nine (39), all inclusive, in block No. two (2), in Traver's subdivision of the east fifteen $\frac{9.2}{100}$ ($15\frac{9.2}{100}$) acres of the west thirty $\frac{9.2}{100}$ ($30\frac{9.2}{100}$) acres of that part of the southeast quarter ($\frac{1}{4}$) of section No. twenty-three (23) of township No. thirty-nine (39) north, of
454 range No. thirteen (13) east, of the third (3rd) principal meridian lying south of Ogden avenue or Southwestern plank road.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above bargained premises, with the hereditaments and appurtenances. To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said Charles M. Earl, party of the first part, for himself and his heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns; that at the time of the ensealing and delivering of these presents, he is well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasable estate of inheritance in law, in fee-simple; and has
455 good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind and nature soever, and the above bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every other person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

And the said Charles M. Earl & Mary A. Earl, his wife, party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage, and exemption, under or by virtue of any and all statutes of the State of Illinois, providing for the exemption of homesteads from sale on execution or otherwise, and especially under the act entitled "An act to exempt homesteads from sale on execution," passed by the General Assembly of the State of Illinois, A. D. 1851, and approved February 11, A. D. 1851,
456 and an act entitled "An act to amend an act entitled 'An act to exempt homesteads from sale on execution,'" passed by said Assembly, A. D. 1857, and approved February 17, A. D. 1857.

In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

CHAS. M. EARL. [SEAL.]
MARY A. EARL. [SEAL.]

STATE OF ILLINOIS, } ss:
Cook County, City of Chicago, }

Ross Finlayson, a notary public in and for said county and State, do hereby certify that Charles M. Earl and Mary A., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing warranty deed, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

And the said Mary A. Earl, wife of the same Charles M. Earl, having been by me examined separate and apart and out of
457 the hearing of her said husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her rights under the homestead laws of the State of Illinois, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of the State of Illinois relating to the exemption of homesteads, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal, this 3d day of January, A. D. 1873.

[SEAL.] ROSS FINLAYSON,
Notary Public, City of Chicago.

Endorsed: State of Illinois, Cook county. No. 77324. This instrument was filed for record on the 7th day of Jan'y, A. D. 1873, at the hour of — o'clock — m., and duly recorded in Book 198 of Records, at page 421, Jan. 10th, A. D. 1873. Jas. Stewart, recorder. Entered. Joseph Pollak, county clerk.

458 EXHIBIT "L."—H. W., *Master.*

List of Lots in Block 2, Traver's Sub., Sec. 23, 39, 13, owned or controlled by me at beginning of this suit.

Lots 24, 25, 26, subject to trust deed to Hammond for $1,000.

Lots 20, 21, 22, 23, subject to trust deed to Hammond for $1,000.

Lots 27, 28, 29, subject to trust deed to Hammond for $1,000.

Lots 42, 43, 44, 45, 46, 47, 48, subject to trustee deeds to Hammond for $2,000 & $600.

Lots 30, 31, 32, subject to 1st lien to Dederick for $2,000; subject to second to Hammond for $1,500.

I find that I had conveyed all that I owned in block 3 previous to this suit.

JAMES C. HYDE.

459 Block 2.

42, 43, 44, Feb'y 1, '75, 1,000, Lucy W. Hastings, 3 y'rs, 10 per cent.

45, 46, 47, 48, 1,000, Lucy W. Hastings.

20, 21, 22, 23, M'ch 16, '75, Marcus Preston, 1,000, 3 y'rs, 10 per cent.

24, 25, 26, M'ch 8, '75, L. E. Hobart, 5 y'rs, 10 per cent., 1,000.

27, 28, 29, M'ch 11, '75, $500, Louis B. Grout; 500, Lydia Grout, 5 y'rs, 10 per cent.

30, 31, 32, t. d. to John Borden, dated Nov. 2, 1874, to Peter W. Dederick, 2,000, 1 yr.

Subject to 2d mortgage to secure Hammond & Bogue, $1,500.

460 EXHIBIT G. L. L.

H. L. HAMMOND, LOAN AGENT,
ROOM 9, NO. 95, WASHINGTON STREET, CHICAGO, ILL.

Mr. HAMMOND: I find the following release of property in block 2, Traver's sub. in 23, 39, 13 of record between the dates December, 1872, and July, 1875:

1. H. L. Hammond to J. C. Hyde. Release dated Jan'y 15, '75, recorded in book 419, page 278; recorded Jan. 15, 1875; lots 1 to 19, inc.; block 2, &c.

2. Do. to do. Release dated Jan'y 22, '75, recorded, &c., book 419, p'g 505. Lots 37 to 40, inc.; block 2, &c.; recorded Jan. 23, 1875.

3. Do. to do. Rel. dated M'ch 9, '75; rec., &c., 419, 453; lots 35 to 36; b. 2, &c.; recorded March 10, 1875.

4. Do. to do. Rel. date- Feb'y 23, '75; rec., &c., 419, 495; lots 41 to 48; block 2, &c.; recorded Mar. 23, 1875. All the block released except lots 20 to 29.

461 The following warranty deeds with full covenants, including covenants against all incumbrances, were executed by

Henry J. Traver & wife, and Michael Traver and wife, conveying the following lots in Traver's sub'd.:

Land Conveyed.	Name of Grantee.	Date of Deed.	Time of Record.	Consideration.
Lot 35, block 3	Thomas C. Matlock	May 6, 1872	Aug. 2, 1872	$500 00
Lot 41, bl'k 3	Charles A. Katz	May 13, 1872	Aug. 9, 1872	500 00
Lots 19 & 20, bl'k 3	John M. Cook	June 12, 1872	Aug. 12, 1872	1,050 00
Lots 31 & 32, bl'k 3	Charles H. Van Patten, Jr.	July 5, 1872	Sept. 10, 1872	1,000 00
Lots 17 & 18, bl'k 3	John D. Kendig	July 8, 1872	Aug. 8, 1872	1,000 00
Lots 14, 15, & 16, bl'k 3	Abbey Gibson	July 22, 1872	Aug. 8, 1872	1,800 00
Lots 37, 38, & 39, bl'k 3	William C. Gibson	July 22, 1872	Aug. 8, 1872	1,800 00
Lot 8, block 3	John Joseph Marnell	July 31, 1872	Sept. 5, 1872	1,800 00
Lots 9, 10, 11, 12, 13, and 36, block 3	Nathaniel McBride	August 1, 1872	Aug. 20, 1872	500 00 3,500 00
Lot 29 bl'k 3	Philip Adolphus	August 5, 1872	Aug. 12, 1872	530 00
Lots 10 to 39, both inclusive, block 2.	Charles M. Earl	Sept. 2, 1872	Sept. 12, 1872	15,000 00
Lot 33, bl'k 3	Eugene Marguerat	Sept. 18, 1872	Sept. 25, 1872	500 00

462 EXHIBIT "O" AND LETTERS MARKED 1 to 34 INCLUSIVE.

(No. 1.)

DEC. 17, 1872.

MR. HAMMOND.

MY DEAR SIR: I expect to have in a few days *twenty thousand dollars* to invest in some way for the benefit of my brother's children. If I can get ten per cent. for it at Chicago, with satisfactory security, I am inclined to send it to you. If there were a good chance to invest it by the purchase of real estate, I might perhaps do that, and I would come to Chicago to satisfy myself in the matter if deemed advisable.

At any rate I shall be glad to hear from you at an early day, as to the per cent., you can make it *net* me on a first class mortgage.

Yours truly, C. A. RICHARDSON.

(No. 2.)

DEC. 20, '2.

C. A. RICHARDSON, Esq., 15 *Cornhill, Boston.*

DEAR BROTHER: Yours of 17th inst. at hand. We can place your money where it will net ten per cent. interest per annum,
463 payable semi-annually, in a loan of 3 to 5 years, as you shall prefer, secured on real estate of twice the value of the loan, besides all improvements. We can do that almost any day, you probably would not lose a day's interest after the money reached us, certainly not a week; one of the most reliable men in town, both morally and financially, tells me he will take $25,000, at 10 per cent., for 3 or 5 years, as desired, and secure it on a piece of unincumbered real estate, for which he paid $50,000, and he is one of the most successful of our business men, who was never crippled by the fire or before or since. He is worth not less than $300,000, and probably $500,000, and keeps his affairs in snug shape. That sum is $5,000, more than you speak of, but I only mention that as a specimen of a loan. Since the Boston fire we have adopted as our rule to pay no attention to improvements on the land, but to require in our securities ample value in the *soil* so that a fire cannot harm the se-

curity. As for investments, by purchase of real estate, I have no doubt we could do well by you, and perhaps you could accumulate faster in that way. Yet there is always more risk, and your returns are not as sure, and the time of receiving the profits uncertain, and as you are managing these funds as a guardian and for chil-
464 dren, would you not prefer to have definite and regular accumulations; a five year loan loan would, when matured, be $30,000, besides int. upon the interest. Of course you might by a successful venture make it $40,000 or $50,000. But you might also fail to make it even $30,000. You must, of course, judge whether you wish to take the risks. The *ten per cent. net* we will warrant for the loan, and will do the best we can if you elect an investment by purchase to make it 20 per cent.

Yours truly,

H. L. HAMMOND,
Per HAMMOND & BOGUE.

(3.)

DEC. 21, '2.

C. A. RICHARDSON, Esq., 15 *Cornhill*, *Boston*.

DEAR SIR: I send, in addition to the letter dispatch yesterday, a copy of our circular, in which I have marked some paragraphs.

I wish also to add that all our new loans are made with (1) a note for the principal due at the end of the time agreed, with ten per cent. int. after due, (2) coupon notes for the interest, one of which falls due every six months, and these also are with ten per cent. int. after due, and all mentioned in the trust deed & secure on the
465 land. As soon as the papers are all executed, we send the notes to the lender and put the trust deed on file, to be recorded; as soon as that is returned from the recorder's office we forward that also to the lender, who can keep all the papers; then wherever a coupon note matures, he has only to send it for collection, (& not the principal note, which would have to be sent either by express, at considerable cost, or risked in the mail,) and receive his money by return mail, or should he prefer, & the borrower also, to let the coupon notes lie till all matured, they are drawing ten per cent. int., & are also secured by the trust deed. The real estate too, usually increases in value much faster than the interest accumulates, so that the security is growing better & better through the whole term, should the borrower consent to that arrangement. The gross amount at the end of the five years, if I have figured correctly, would be over $32,000. Should the borrower decline, we could take the $1,000 int. & reinvest it, in all probability, at the same rate each six months.

Yours again,

H. L. HAMMOND,
For HAMMOND & BOGUE.

Please tell Mr. Greene to increase the size of the names "Hammond & Bogue" in our adv't the width of two lines.

H. L. HAMMOND.

466 (4.)

DEC. 24, 1872.

MY DEAR SIR: I have received your two letters and circular, and

am inclined to believe that my best course would be to let the money in my possession at ten per cent. for three years, interest payable semi-annually, the details to be arranged as stated in your circular. I am not sure that I can safely send to Chicago *more than nineteen thousand*, for I must retain something for the current expenses of the children; still, if I could do enough better with a round *twenty thousand* as an investment than with nineteen, I would try to make it nineteen.

I can tell much better in a few days just how large a sum I can spare. I would not object to putting it in two sums, one of ten thousand and one of nine, if that should seem best. Of course, you are sure that the *title* is all right in case of the security, and you doubtless see that the records are searched back, as with us here.

If you have a chance for investment that is satisfactory on all points, you may arrange for it any time to the extent of $19,000 for three years; and, if anything would be gained, in time you may draw on me at sight for the same, or telegraph me to send
467 check immediately, and I will start it any day, meantime I shall know in a few days just how much I can conveniently spare. I should say that I depend on the income of this money for the present support of my brother's children.

Yours truly, C. A. RICHARDSON.

Rev. H. L. HAMMOND.

P. S.—If, in the present demand for money, you can do any better than ten per cent. net, you will of couse let me know. R.

(5.)

DEC. 28, '2.

C. A. RICHARDSON, Esq., 15 *Cornhill, Boston.*

DEAR SIR: Since closing my letter of this morning, it occurs to me that perhaps the $600 will be enough for you to retain till the semi-annual int. shall fall due, & therefore you might prefer that the next $10,000 should draw ten per cent. If so, that can be so arranged.

We can place it to-day, but prefer to wait & hear from you.

Yours truly, HAMMOND & BOGUE,
Per H. L. H.

(6.)

DEC. 31, 1872.

Mess. HAMMOND & BOGUE.

468 GENTLEMEN: Both yours of the 28th are received this morning. I will be ready to respond to the draft for $9,400 whenever it arrives. I like the plan of 8 p. c., as you have arranged, the balance of two per cent. being deducted from the principal.

I want to be sure and not cramp myself for means, and therefore want to retain in my hands at least $1,000 out of the $20,000. So that if you can arrange the second $10,000 as you have the first, it will be entirely satisfactory. Should there be any advantage in it I could just as well let the second ten thousand for five years as for

three, but I leave that point with you to be decided according to circumstances.

A vital point in the whole transaction, of course, is that the security should be sound, and were I not personally acquainted with Mr. Hammond I should feel some solicitude about that. As it is, I feel entire confidence in entrusting the matter to your hands.

It is quite possible that I may be able to turn more funds into your hands for investment, which I shall be happy to do, if occasion offers.

Please notify me whenever you draw for the second loan.

Yours respect., C. A. RICHARDSON.

(7.)

469 DEC. 28, '2.

C. A. RICHARDSON, Esq., 15 *Cornhill, Boston.*

DEAR SIR: Your two letters of 21st & 24th at hand. We have contracted a loan of $10,000 for you for three years. Papers dated to-day, secured by a trust deed of unencumbered property within the city limits, of more than five acres, worth, at a low valuation, $25,000. The title has been examined & approved by good R. E. lawyers. Abstract of title furnished. The note to draw 8 per cent. int., to be paid semi-annually, and made equal to more than ten by pay't of 2 per. cent. per an. in advance for the three years, amounting to $600. We have arranged it thus so that you could loan the whole $20,000 in two round sums, as you suggested, & yet that you might retain $1,000 or $1,200 for the present needs of the children, as we can easily arrange the other $10,000 in the same way, if this meets your approval. Your views will be met, so far as we know them. We suppose this will reach you on Monday, & our contract is such that if you should, for any reason, wish to *veto* it by telegraph we will wait for you to do so till Tuesday noon. If we do *not hear* from you to the contrary on Tuesday, we shall, as you authorize in your last letter, draw on you for ninety-four
470 hundred dollars ($9,400). In addition to the security the man who makes the paper is prompt and reliable.

In answer to some inquiries of your letters: (1) the fire really affected the title to very few pieces of property in the city, and those we avoid in our loans. There is some delay and additional expense in procuring abstracts which is an inconvenience, that is all.

As for your coming to Chicago, we should be very happy to see you, but do not deem it at all necessary for you to take the journey to secure a safe and profitable loaning of the funds as we will take every precaution, as the interest has already commenced we draw on you rather than await a check from you.

Yours truly, HAMMOND & BOGUE.

(8.)

DEC. 21, 1872.

MY DEAR SIR: I infer from what I see in the papers that there is great demand for money in Chicago. I have got my $20,000 in hand and am ready to invest most of it, keeping back perhaps one thousand dollars.

One of the children comes of age in about four years, while the next oldest is four or five years younger, and the next per-
471 haps two years younger, therefore I must have one third of it payable in five years, but I presume I can do best with it on a short loan in the present emergency.

I am told that the records of the burnt district were so far destroyed, that in many cases it is almost impossible to give satisfactory mortgages. How is this?

I presume you will write me on the receipt of my first letter, as I said then I will take a trip to Chicago if it shall seem to be necessary, in order to make a satisfactory investment. My object, of course, must be to make the money earn as much as I can fairly.

Yours truly, C. A. RICHARDSON.

(9.)

BOSTON, *Jan.* 1, 1875.

Messrs. HAMMOND & BOGUE.

GENTLEMEN: I infer from your card received last night that you have been obliged to commence process by which to get possession of some of the securities on my notes.

I hope there is to be no serious trouble in the matter. I am necessarily feeling some solicitude about it, and I hope you will keep me informed as to the progress of matters The face of one of the $2,000 notes I am expecting in accordance with your
472 letter.

Yours respect., CHARLES A. RICHARDSON.

(10.)

JAN. 5, '6.

CHAS. A. RICHARDSON, Esq.

DEAR SIR: Yours rec'd, we were obliged to commence suit as you supposed, and so needed your full name. Mr. Arnold promises us $2,400 next Monday on your other loan, he should pay Friday the 7th, but perhaps a day or two later will not be material.

Yours truly, HAMMOND & BOGUE.

(11.)

JAN'Y 3, '3.

C. A. RICHARDSON, Esq., 15 *Cornhill*, *Boston.*

DEAR SIR: Yours of the 31st ult., at hand this morning. There has been a little delay in making up the papers, which is a common thing, and we shall not draw on you till to-morrow, tho' the papers will be dated the 28th December.

We have to-day negotiated for the other $10,000 on the same terms, and you can send your check for that. The loan dates to-day. Your check will be for $9,400 also, and will reach us by the time we shall need it, if sent promptly.

This loan is taken by my partner Oswell A. Bogue; he is
473 worth $150,000, over & above all liabilities. He is a prompt man, who always meets his papers on time, therefore has the best kind of a business representation; is a deacon in one of our Con-

gregational churches. In loaning to him I have the advantage of knowing the man thoroughly, & the security. Yet with regard to the value of the land, we have gone out & obtained the written opinion of outside, & disinterested real estate men, of good judgment, & they 'prize it at twenty thousand dollars, one of them said verbally, that if he owned it he *would not sell* it for $25,000. There is, therefore, every prospect that it will rise in value, & that much faster than the interest accumulates. With regard to the title, I have seen the written opinion of a good real estate lawyer, who has carefully examined it professionally, & have no doubt that it is all right. I am much obliged for the confidence you repose in me, & will endeavor that you shall never have occasion to regret it. If you can turn more funds into our hands for investment, we shall be greatly obliged.

Yours truly, H. L. HAMMOND,
For HAMMOND & BOGUE.

(12.)

JAN'Y 4, 1873.

474 DEAR SIR: I immediately on the reception of your letter, saying that you would draw on me for $9,400, unless you heard from me within a limited time, I replied approving your plan, and saying that the money would be ready, and supposed that the drafts would be here before this, but it has not come up to Saturday noon.

I only write this to make sure that you hear from me.

Yours truly, C. A. RICHARDSON.

(13.)

JAN. 6, 1873.

MY DEAR SIR: Yours of the 3rd comes to hand this morning, and I send immediately the enclosed check for $9,400, and shall expect your draft in a day or two for $9,400 more. You speak of negotiating this second loan in the same manner as the first, but you afterwards refer to *accumulated* interest.

The interest, you will remember however, was to be paid semi-annually, so that there is no prospect that much can accumulate. Please send the note and papers, coupons for interest, etc., when they are ready.

Yours, respect., C. A. RICHARDSON.

P. S.—The papers should be made out to me as *guardian*,
475 though that is not absolutely necessary.

C. A. R.

Rev. H. L. HAMMOND.

(14.)

JAN'Y 9, '3.

C. A. RICHARDSON, Esq'r, 15 *Cornhill, Boston.*

DEAR SIR: Your draft for $9,400 came to hand this morning. Enclosed please find notes for ten thousand dollars, as follows:

1. One note for $6,000, dated Dec. 28, 1872.
2. One " $4,000, " "

Both due three years after date.

3. Six coupons, or interest notes, of $240 each, for the first principal note. All same date, & one of them due each six months.

4. Six coupons, or interest notes, of $160 each, for the second principal note. All same date, &c.

These are all what is called here purchase-money paper, which takes precedence of all dowers, homestead claims. The notes are all made payable (on the back) to your order as guardian, according to your last.

The trust deeds have been filed for record, & will be forwarded when they return from the recorder's office. These are the papers for the first loan on real estate, valued at $25,000. The notes for the second loan will be sent soon, perhaps to-morrow.

Yours, fraternally, HAMMOND & BOGUE.

476 P. S.—By the expression accumulated interest in my last I did not —— six months' interest ——, but that, even if no interest was paid for three years, the security would still be enough for both principal & interest.

(15.)

JAN. 9, 1873.

MY DEAR SIR: Your draft for $9,400 arrived yesterday, the 8th, and was duly honored. Whenever the papers are ready, please send them.

Yours, respect., C. A. RICHARDSON.

(16.)

JAN'Y 14, 1873.

Rev. H. L. HAMMOND.

MY DEAR SIR: I write a line to acknowledge the receipt yesterday of your two parcels of notes. They appear to be all right, and I shall expect the mortgages in due time.

Yours, truly, C. A. RICHARDSON.

(17.)

BOSTON, *Jan.* 12, 1875.

Mess. HAMMOND & BOGUE:

GENTLEMEN: The draft for $2,403.25 reached me this morning, but I am unable to tell *which* of the notes is paid; one of
477 them belonged to me personally, as the note showed, while the others were payable to me as guardian. Please inform me.

Also, will you please give me what light you can as to the six and four thousand dollar notes. In case nothing can be expected but the property how am I likely to come out? It is a matter of pretty close interest to my brother's children, and any light you can give me is very desirable as to its bearing on certain plans touching their future.

Yours, respect., C. A. RICHARDSON.

(18.)

JANUARY 10, '3.

C. A. RICHARDSON, Esq., 15 *Cornhill, Boston.*

DEAR SIR: Enclosed find the notes of Oswald A. Bogue for the second ten thousand dollars sent us, viz.: five principal notes of $2,000 each, $10,000, lettered A, B, C, D, E, are dated January 3, 1873, all payable three years from date, at the Union National Bank Chicago, to order of C. A. Richardson. Each prin. note has six coupon or interest notes attached, with corresponding lettering, equaling 30 in all, for $80 each, due in 6, 12, 18, 24, 30, and 36 months; five of them, each six months ($5 \times 80 = \$400$) int. semi-an'ly, each principal note & coupon is secured by a trust deed of
478 five acres of the tract, 25 acres in all, trust deeds also lettered like notes. They have been filed for record. This seems some like sending for too many papers, but as they all mature at the same date, it is not really dividing the loan any more than so many U. S. bonds with their coupons, so I hope it will not seriously incommode you. Mr. Bogue thinks it might be of great convenience to him, in case he should wish to sel lany part of the tract before the three years expire, to be able to treat each five acres separately. Such a sale would, of course, make no difference in your security.

The notes, as you will see, are payable to your individual order. Your letter suggesting the addition of "guardian" not arriving in season, but you can easily write on the back, "pay to order of C. A. Richardson, guardian," and sign that "C. A. Richardson," which will answer the same purpose.

Yours, fraternally, H. L. HAMMOND.

(19.)

BOSTON, *July* 7, 1873.

MY DEAR SIR: I sent you June 25th some half doz. coupons notes to collect interest, to the amount of about $800, but got no acknowledgement from you. Did you receive them all right? I hoped to get the money before this.

Yours, truly, C. A. RICHARDSON.

Rev. H. L. HAMMOND.

479 (18.)

JAN'Y 11, '76.

CHAS. A. RICHARDSON, Esq, *Cong. St., Boston.*

DEAR SIR: Enclosed we send you a draft for twenty-four hundred three and $\frac{25}{100}$, $2,403\frac{25}{100}$, which we have to-day collected of Mr. Arnold, viz: one principal note of $2,000.

Five coupons of $80 each	400	
Interest on delay of pay't	3	25
	2,403	25

There is nothing new on the other; we fear that it must await process of law.

Yours, truly, HAMMOND & BOGUE.

(19.)

JAN'Y 17, '6.

C. A. RICHARDSON, Esq., *Boston, Mass.*

DEAR SIR: The note paid was one of the notes endorsed by you as guardian. The note endorsed by you simply with your own name is still with us, & is the 5th of the series. With regard to the other loan we have consulted our lawyer since rec't of yours. He says, as to ultimate security you are all right, and he hopes if the matter has to be carried thro' the whole legal process, to have it ground out and in definite shape in three months.

We hope it may prove so; lawyers may be inclined to take too hopeful views, and we fear that any plans for your wards
480 implying the receipt of this money within that time would need modification.

Yours, truly, HAMMOND & BOGUE.

(20.)

BOSTON, *Feb.* 26, 1873.

MY DEAR SIR: Your communication for our children's column came this morning and shall receive early attention.

Have you not forgotten the mortgage deeds securing the two notes, one of six and one of four thousand, signed by Jas. C. Hyde. I received the deeds corresponding with Mr. Bogue's notes, but not with Mr. Hyde's.

Yours, respect., C. A. ROBINSON.

(21.)

JAN'Y 24TH, '3

C. A. RICHARDSON, Esq.

DEAR SIR: Enclosed find the trust deeds for the Bogue notes, which have just returned from the recorder's office. Five are number lettered to correspond with notes already in your possession.

Yours, truly) HAMMOND & BOGUE.

(22.)

MARCH 1, '3.

C. A. RICHARDSON, Esq., 15 *Cornhill, Boston, Mass.*

481 DEAR SIR: Yours of Feb'y 26th, at hand; thank you for calling attention to the trust deed; they got into the wrong box at the recorder's office, where we found them this morning; find them enclosed. With regard to the article that I forwarded, thinking possibly it would do for the children's column. I thank you for your courteous reception of it. You know, of course, that as an old editor, I have great faith in "waste baskets," &c., and if one should claim that manuscript I shall institute no suit for its recovery.

Yours truly, H. L. HAMMOND.

(23.)

JAN. 7, '5.

C. A. RICHARDSON, Esq., *Cong.* St., 1 *Somerset St., Boston M's.*

DEAR SIR: Enclosed we send draft to your order for four hundred ($400) dollars, for coupons rec'd for collection.

Yours, truly, HAMMOND & BOGUE.

(24.)

JUNE 30, '5.

C. A. RICHARDSON, Esq., *Boston, M's.*

DEAR SIR: Enclosed find draft to your order for four hundred ($400) dollars, in pay't of the coupon of James C. Hyde,
482 due the 28th inst. to 1st prox.

Yours, truly, HAMMOND & BOGUE.

(25.)

BOSTON, *Sept.* 29, 1875.

MR. HAMMOND.

DEAR SIR: I write a line to say that I think about half the amount I now have in Chicago, that is ten thousand dollars or so, may remain there another three years. I ought to get ten per cent. for it. The main thing, however, is *sound security*, and I am not ready now to say that I will not let it remain for less than ten. You can communicate with me when there is anything definite to propose. I wish your interest coupons were collectable here.

Yours respect., C. A. RICHARDSON.

(26.)

BOSTON, *Dec.* 4, 1875.

MR. HAMMOND.

DEAR SIR: Some time since I wrote you saying that I would relet a portion of that Chicago loan through you, say half of it, if you choose. I have heard nothing from you, and write a line to say that I shall be glad to know as early as practicable just what sum you will re invest, or at least what proposals for re-invest-
483 ment you can make. Am I to send the last of this month both the notes and coupons endorsed over as usual?

Yours, truly, C. A. RICHARDSON.

(27.)

DEC. 8TH, '5.

C. A. RICHARDSON, Esq., *Boston, Mass.:*

DEAR SIR: Yours of the 4th inst. was duly rec'd. Till within a few days we have supposed that Mr. Arnold, who bought the property securing the Bogue notes, would pay up promptly at maturity. He now tells us that he can pay only one of the principal notes ($2,000) at maturity, besides the interest then due on whole loan, but that he will pay $2,000 per month & ten per cent. interest till all is paid, completing all in five months. We think he will meet these payments as he proposes, & hope it will not seriously incom-

mode you to receive it in that way. It will, we have no doubt, be for your interest to accede to his request, for the security, we are sorry to say, has partaken of the depreciation of all real estate since the loan was made, & to foreclose and sell now would result in your having to buy it in, which we presume you wish to avoid. With regard to the Traver loan we have to say from present ap-
484 pearances we do not think there is a prospect of any payment being made at present. But we are of opinion it will be for your interest to institute prompt proceedings to foreclose if nothing is paid. The security on this loan was modified by us from the form as originally taken as follows: At the time of negotiating for the loan there was existing a prior purchase money security of the same character as that taken by us. Our first arrangement at the time of the negotiation of the loan was to have this original incumbrance released, in order that your loan should be a first lien. Instead of the release we had the original security (being the purchase money paper secured by deed of trust) transferred to us for your account in substitution of the security first taken, and w'h we hold for your security as a first and prior lien, & we think it advisable in case no payment is made this month, when the payment is due (Dec. 19,) that proceedings for foreclosure in the United States court should be commenced immediately. We are legally advised & believe that this course will result in producing an early settlement, but if not it will be a speedy proceeding by which a final result may be reached much sooner than is the case in the other courts. We would like you to advise and direct us in regard
485 to immediate proceedings to foreclose, as we may deem necessary for our interest. An early reply is important. Send all papers of both loans.

Yours truly,

HAMMOND & BOGUE.

(28.)

DEC. 13, '5.

C. A. RICHARDSON, Esq., *Boston, Mass.*

DEAR SIR: Yours covering the documents for which we sent received, viz: Five notes of Oswell A. Bogue for $2,000 each, with five coupons accompanying of $80 each, all dated Jan. 3, 1873, and all due Jan. 3d, 1876; also five trust deeds securing said notes; also two notes of James C. Hyde for $6,000 & $4,000, respectively, and two coupons for $240 and $160, respectively, all dated Dec. 28, 1872, & all due Dec. 28, 1875; also two trust deeds securing said notes.

Yours, truly, HAMMOND & BOGUE.

(29.)

DECEMBER 29, '3.

C. A. RICHARDSON, Esq., *Boston, Mass.*

DEAR SIR: Enclosed find draft to your order for four hundred dollars ($400) for the Hyde coupons, due the 28th inst. We have just rec'd the amount, which, in the times, we consider punc-
486 tual. We shall hope to collect the others when due.

Yours, truly, HAMMOND & BOGUE.

P. S. Please send us the bill for advertising in the Congregationalist to the close of this month. H. & B.

(30.)

BOSTON, *Feb.* 2, 1876.

Mr. HAMMOND.

DEAR SIR: When you send the next two thousand dollars note —I mean the money for it—please give mē all the light you can as to the property on which you have foreclosed. Is there a probability of a loss, & if so, is the loss *likely* to be small or heavy? Must the property be sold in order to realize on it? In case it doesn't sell for enough to satisfy the notes, are not the endorsers—I think there are two—personally responsible? Such is the fact here with us, I believe.

Yours, respect., C. A. RICHARDSON.

(31.)

APRIL 21, '6.

C. A. RICHARDSON, Esq., *Boston, Mass.*

DEAR SIR: We have delayed several days answering yours of the 17th, hoping to have a draft to remit with our answer. We have been following up Mr. Arnold all the month for the promised
487 installment without result, and now he says he cannot pay any more till October. We are told that he has means & that he will ultimately pay; that he is packing & shipping meats to Europe, & must wait for returns; that he is cramped now, because some houses that he sold have come back upon him instead of the payments for them, on which he relied to meet these notes. If we had not been disappointed by his promises already, we should, from all we can learn of the man, expect the debt to be paid in October. Yet now we cannot tell what to expect.

You can order a foreclosure now with the result that the land will be yours and probably the money will not be realized from it so soon as October, for the market is much depressed. There are few sales made now for cash; most of them are exchanges of one piece of property for another.

If the matter were our own we think we should let it rest till October, with the hope of receiving the money then & 10 per cent. int., since due. If that hope is disappointed you can foreclose then as well as now, and possibly there may be a change of times improving real est.

With regard to the other loan we have seen the lawyer since rec't of yours, & and he says the matter is taking its regular
488 course as fast as it can grind out; that he is losing no time & will press it forward as speedily as possible.

We need not say that we as much regret to write this letter as you will to read it; it is a sore disappointment, but the times are beyond our control.

Please instruct us whether to take steps now for foreclosing or to wait till October.

Yours, truly, HAMMOND & BOGUE.

(32.)

BOSTON, *Apr.* 27, 1876.

Mess. HAMMOND & BOGUE.

GENTS: I do not see that anything can be gained by foreclosing now, but I am suspicious that the ultimate decision of Mr. Arnold whether to pay will turn on the question whether the lands are actually worth the mortgages. I once asked you the question whether in your State the indorsers, or the person who originally gave the note, is not holden, provided I take possession and the land does not sell for the value of the mortgage. Please enlighten me on this matter when you write. You will of course understand the importance of preserving with care the papers, notes, etc., in your possession.

As the matter stands just [now] I seem to be entirely cut off from any income for the support of my brother's children for the
489 present, but I shall hope for the best. How about the taxes? If they have been allowed to run behind is there a chance of the lands being sold in default. I shall depend on you to guard my interests as carefully as possible in the whole matter.

Yours, respect., C. A. RICHARDSON.

(33.)

BOSTON, *Dec.* 10, 1875.

Mess. HAMMOND & BOGUE.

GENTLEMEN: I am sorry to apprehend any difficulty in collecting the notes, but I must confide in your judgment, and I request you to go forward at any time and foreclose when it shall seem best in your judgment to do so. In case of the Arnold or Bogue notes I accede to the proposal of the $2,000, and $2,000 per month, as proposed. The deeds I will send to-morrow, thinking best not to entrust both the deeds and the notes to the same mail.

Please keep me informed as to the progress of matters, and do not fail to take such steps as are necessary to protect my interests. I shall look for an immediate acknowledgment of your receipt of the papers.

Yours, respect., C. A. RICHARDSON.

(34.)

JULY 5TH, '3.

C. A. RICHARDSON, Esq., *Cong'l House, Boston, Mass.*

490 DEAR SIR: Enclosed find draft for $817.80, of which for coupons sent us $800; for enclosed bill, $17.80; $817.80.

Please have the bill receipted, and return it to us.

Yours truly, HAMMOND & BOGUE.

491 EXHIBIT O.

H. L. HAMMOND, LOAN AGENT,
ROOM 9, NO. 95 WASHINGTON STREET.

Statement of Ac. of C. A. Richardson with Hammond & Bogue, Chicago, Illinois.

		DR.			CR.
1873.			1873.		
Jan'y 9.	To loans	$10,000 00	Jan'y 4.	By cash	$9,400 00
10.	" "	10,000 00	9.	" "	9,400 00
July 5.	To cash	800 00	16.	" "	600 00
1874.			4.	By O. A. Bogue	600 00
Jan. 5.	" "	400 00	June 18.	By cash	400 00
July 7.	" "	400 00	July 3.	" "	400 00
Dec. 30.	" "	400 00	1874.		
1875.			Jan. 3.	" "	400 00
Jan'y 7.	" "	400 00	July 31.	" "	400 00
June 30.	" "	400 00	Dec. 30.	" "	400 00
July 6.	" "	400 00	28.	" "	400 00
1876.			1875.		
Jan. 11.	" "	2,403 25	June 28.	By J. C. Hyde	400 00
Feb. 7.	" "	2,118 90	July 6.	By cash	400 00
May 23.	" "	50 00	1876.		
27.	" "	25 00	Jan. 11.	" "	2,403 25
Nov. 27.	" "	50 00	Feb. 7.	" "	2,018 90
1877.			June 13.	" "	25 00
Jan. 10.	" "	600 00	July 20.	" "	50 00
1878.			1877.		
May 14.	Interest	6 00	Jan'y 8.	" "	600 00
14.	Cash	3,944 00	1878.		
			May 14.	" "	4,000 00
		$32,297 15			$32,297 15

492 EXHIBIT "M."—H. W., *Master.*

J. C. HYDE, REAL ESTATE, 14 NIXON BUILDING,
CHICAGO, *Jan.* 4, 1873.

MR. H. J. TRAVER.

DEAR SIR: Yours rec. yesterday with quit-claim deed. Mr. Hyde got back this morning from Cincinnati. He saw Mr. Dickson, and has made the ar ang-ment with him to release a part of the lots on payment of the note & interest now due, & pay the next note that comes due on you, but will not release any more until all the bal. is paid, but will receive the money at any time. Mr. Hyde ses he will pay all in 3 to 4 mont-s and get it all release-, so now as quick as the papers are brought down it will be paid off so-n, $12,000.

M. TRAVER.

EXHIBIT "M."—H. W., *Master.*

CHICAGO, *Jan.* 8, '73.

BROTHER HENRY: Yours is at hand of the 7. It is a matter of course I hav- thought of thouse suggestions you mention in your letter. Mr. Hyde *cogt* a telegram from Dickson not to do anything in the Traver matter until he rec. a letter from him. This
493 morning the letter came to hand, but all is right. Hyde payes this note & interest, and payes the note that comes due

next December, & Snyder & Lee & Hyde indores & agrees to pay the other notes that will still *will* be unpaide; that Ayres requires of them to do, & by doing that they will release the one block & som- 10 or 12 other lots, & requires them to let them hold the notes of thouse we have solde, to-, as a -curity to them, that those will be no tr-ubl- hereafter in the payment of those other notes. So you will see that our notes will be taken care off. As quick as the abstract is brought down the money is ready, so Hyde ses.

I don't -now as it will be nesuary for you to come in, but if thare should be anything go rong, I will *right* you. God -nows, I wish it was all don- and off my mind, so I could do something else.

Yours truly, M. TRAVER,
143 *S. Clark St., Room* 10.

494 EXHIBIT "Z."

LA FAYETTE BANK, CINCINNATI, *J'y* 5, 1875.

PRESTON, KEAN & Co., *Chicago.*

DEAR SIR-: I inclose for collection & credit—

	Joseph Ullman	$150 00
	Do.	169 67
513	J. T. Ryerson, due 22 Feb., ex.	1,657 99
4	Henry J. Traver & Michael Traver and interest from 19 June, '74, until paid, at 8 pr. ct. pr. annum.	5,373 67
5	Henry J. Traver & Michael Traver interest since 22 Dec. '74, at 10 pr. ct. and protest fees.	5,807 14

Mr. Ayres will call at your office and examine the trust deed and release; if he says they are all right, then notify James C. Hyde, No. 14 Nixon building, that you hold the papers for payment.

When paid please send check on New York, $10,000.

Very respectfully, WM. J. DUNLAP, *Cashier.*

495 UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the Circuit Court of the United States for said District.

HENRY J. TRAVER
vs.
MICHAEL TRAVER *et al.* } Bill for Relief, Injunction, &c.

Consolidated with In Chancery.

CHARLES A. RICHARDSON
vs.
HENRY J. TRAVER *et al.* } Bill to Foreclose, &c.

To F. C. Ingalls, Esq., solicitor for com't Charles A. Richardson:

You are hereby notified that, in pursuance of an order of court entered in the above consolidated causes, the complainant, Henry J.

Traver, will, on the fourteenth (14) day of October, A. D. 1878, commencing at the hour of twelve o'clock noon of said day, and continuing thereafter from day to day, if necessary, at the office of N. B. Wescott, Esq., No. 67 West Third street, in the city of Cincinnati, in the State of Ohio, before the said N. B. Wescott, a notary public proved to take the depositions of Henry Peachey, William C. Dunlap and John Dickson, residents of said city of Cincinnati, and others, witnesses, upon interrogatories to be propounded to
496 said witnesses orally; said depositions, when taken, to be read in evidence upon the hearing of said consolidated causes. At which time and place you can appear and cross-examine said witnesses if you see fit.

McCOY & PRATT,
Solicitors for Henry J. Traver.

I consent to testimony being taken on within notice, a letter from copy of questions & answers to be sent me at Chicago soon as testimony is taken, so that I can send cross-interrogatories to be answered by witnesses who shall be examined, before depositions are closed, if I so desire.

F. C. INGALLS,
Sol. for Chas. A. Richardson.

CHICAGO, *Oct.* 10, 1878.

EXHIBIT A.—N. B. W., *N. P.*

CINCINNATI, *Jan'y* 5, 1875.

PRESTON, KEAN & Co., *Chicago, Ills.*

DEAR SIR-: I enclose for collection & credit—

Joseph Ullmann		150	
	Do.	169	67
513	J. T. Ryerson, due 22 Feb'y, ex.	1,657	99
514	Henry J. Traver & Michael Traver and interest from 19 June, '74, until paid, at 8 per ct. per annum.	5,373	67
497	515 Henry J. Traver & Michael Traver interest since 22 Dec., '74, at 10 pr. ct. and protest fees.	5,807	14

Mr. Ayres will call at your office and examine the trust deed and release; if he says they are all right, then notify James C. Hyde, No. 14 Nixon's building, that you hold the paper for payment.

When paid, please send check on New York, $10,000.

Copy of letter sent you Jan'y 5th, 1875.

Very respectfully,

WM. J. DUNLAP, *Cashier.*

The depositions of Henry Peachey and John Dixon, witnesses of lawful age, produced and sworn on their corporal oaths, on the 14th day of October, at the office of the undersigned, at No. 67 west 3rd street, in the city of Cincinnati, county of Hamilton, in the State of

Ohio, by the undersigned, a notary public in & for said county of Hamilton, under and by virtue of the notice and stipulations hereto attached in a certain cause or suit now pending & undertermined in the circuit court of the United States of America, in and for the northern district of Illinois, wherein Henry J. Traver, is complainant and Michael Traver *et al.* are defendants, consolidated with the case of Charles A. Richardson as complainant & Henry J. Traver *et al.* are defendants, in said court, upon oral interrogatories propounded on behalf of said Henry J. Traver, as well as upon
498 written cross-interrogatories on behalf of said Richardson attached hereto. The said examination having commenced at 12 o'clock m. of the said 14th day of October, 1878, at my office as aforesaid. The said Henry Peachey and John Dickson being first duly sworn by me as witnesses in the said cases, previous to their examination, to testify the truth in relation to the matters in controversy between the said complainants and defendants, testified and deposed as follows:

Quest 1. State your name, age, place of residence, and occupation.

Ans. My name is Henry Peachey; I reside in Warren county, Ohio, and do business in Cincinnati; my age is fifty-seven, and my occupation is a banker.

Quest. 2. Are you acquainted with either of the parties to the foregoing suit?

Ans. Am not.

Quest. 3. You say you are engaged in the business of banking in this city; if you are connected with any bank, please state the name of it and in what capacity are you acting for said bank?

Ans. Lafayette Bank, of Cincinnati, and I am president of said bank.

Quest. 4. State whether you were connected with said bank in January, 1875; and, if so, in what capacity?

Ans. I was, in the capacity of president.

Quest. 5. State whether or not the Bank of Lafayette, of Cincinnati, received two notes on or about the 5th day of January, A. D. 1875, which notes were to be sent to Chicago; if so, state from whom said bank received said notes, the amount of each of the notes, also for what purpose were they left with said bank, and what you did with said notes.

499 Ans. The Lafayette bank received two notes on or about the 5th of January, 1875, from John Dickson, of this city; they were executed by Henry J. and Michael Traver. The amount of the notes was $\$5{,}373\frac{67}{100}$ each. They were left for collection, and were forwarded to Preston, Kean & Co., bankers, of Chicago, for collection for account of said Dickson.

Quest. 6. Please state in what manner said notes were sent to Preston, Kean & Co.; if by mail and letter, please attach a true copy of said letter containing the instructions to Preston, Kean & Co. to this, your deposition, and mark the same Exhibit A.

Ans. They were sent by letter, addressed to Preston, Kean & Co.,

through the mail; a true copy of said letter is hereto attached to my deposition, marked Exhibit A.

Quest. 7. State whether or not the instructions contained in the letter marked Exhibit A were given to you by Mr. Dickson.

Ans. The instructions embodied in the letter marked Exhibit A came from Mr. Dickson.

Quest. 8. State whether or not these notes were discounted by the Lafayette bank; if not, why were they put in the hands of said bank?

Ans. They were not discounted, but they were placed in the hands of the bank for collection and payment, as recited in said letter.

Quest. 9. State what return, if any, you had from Preston, Kean & Co. in regard to the payment of these notes and about what time.

Ans. We ordered them to remit us $10,000.00 of the amount collected by check on New York, which was received in due course of mail; the balance remained at our credit with Preston, Kean & Co., in Chicago.

500 The taking of the above deposition was adjourned until 10 o'clock a. m. Tuesday, the 15th day of October, A. D. 1878.

N. B. WESCOTT,
Notary Public.

TUESDAY, 10 a. m.

Deposition resumed.

Quest. 10. Please state whether or not there was ever any other or different instructions relative to said notes given by the Lafayette Bank to Preston Kean & Co. other than what is contained in Exhibit "A" attached to your deposition; if so, state what said instructions were.

Ans. The sole instructions given in reference to these two notes are contained in my letter of January 5th, 1875, hereto attached as an exhibit; no others were ever given.

H. PEACHEY.

Quest. 1. State you name, age, place of residence, and occupation.

Ans. John Dickson, Arondale, Hamilton county, Ohio; age fifty-three years; am retired merchant; my former business was in Cincinnati.

Quest. 2. Are you acquainted with either of the parties to this suit?

Ans. I have seen defendant, Hyde, at one time, but do not know any of the others.

Quest. 3. State whether you at one time held the notes of Henry J. and Michael Traver, of Chicago, Illinois; if so, state the amount of the notes, and a description of them, as nearly as you can.

501 Ans. I did. I held four of their notes, each dated December 19th, payable in two, three, four, and five years respectively, each for the sum of $5,373 07½-100; they were given

to me by them in part payment for land near Chicago sold them by me.

Quest. 4. Please state what became of said notes.

Ans. The two notes first becoming due were paid in the first part of 1873; the last two notes were sent about the first part of January, 1875, to Chicago, for payment by the Lafayette Bank of Cincinnati under my instructions. I have before me the letter marked "Exhibit A," attached to Henry Peachey's deposition in this case, and I have no doubt that the instructions contained in said letter relative to said notes were given by me to said bank at the date of said letter.

Quest. 10. State whether or not you ever gave any instructions to the Lafayette Bank of Cincinnati, or to any of its officers, or to anybody else, to have those notes last described sent to Chicago to be sold; if not, please state for what purpose said notes were sent to Chicago.

Ans. I never did give any instructions to the Lafayette Bank or any one else to have those notes set to Chicago to be sold, but instructed them to be forwarded for payment only.

Quest. 6. State whether or not you received any instructions or request from any person living in Chicago to send said notes, in the month of January, 1875, to Chicago, and; if so, state who said instructions or request was from, & if it was by letter, please attach a copy of said letter, if you can, to this deposition, and mark it Exhibit "B."

502 Ans. I have examined carefully and cannot find any letter or instructions from any one in charge instructing me to send said notes to Chicago for payment; I feel confident that I must have received some instructions from some one there to forward these notes for payment, especially as one of said notes was at the time not yet due.

JOHN DICKSON.

Cross-interrogatories to be propounded to witness, JOHN DICKSON, on the part of defendants, CHARLES A. RICHARDSON, and ENOS AYRES:

Cross int. 1. Is it not the fact that the note due in December, 1874, was first forwarded to Chicago, being at that time the property of the Ashland Bank of Kentucky, and afterwards returned protested, and that after that the two notes were sent forward to Chicago under your instructions, as stated in your direct examination?

Ans. to cross int. 1. Yes; that is true to the best of my knowledge and belief.

Cross int. 2. Is it not the fact, according to your best recollection, that before the said two notes were so forwarded, you received a communication from Mr. Hyde, in substance requesting you

503 to have both of said notes sent on, and that he would get a third party to take them up and hold or carry them, and that you would thus receive your money without foreclosing, and when you endorsed the note, not then due, "without receiver," did you

not so indorse it in view of your expectation that said notes would be so taken up by a third party?

Ans. to cross int. 2. I have no doubt that before the forwarding of said notes, on January 5th, 1875, that I received instructions from some one in charge to send them on there for payment; I cannot say from whom these instructions were received, but as I don't remember of having any correspondence with any other party than Mr. Hyde, it is very reasonable to suppose the said instructions came from him; I do not remember anything being said about any third party taking up and holding or conveying said notes; I cannot say that I endorsed the note not then due "without recourse," in view of an expectation that said note would be so taken up by a third party.

Cross int. 3. Were not said notes forwarded to Chicago as aforesaid, with the understanding on your part that they were to be taken up by a third party who would pay you, or pay in for you, the amount of the notes, that is, the amount then due on the note payable in December, 1874, and the amount of the note not then due, with the interest thereon to that date?

504 Ans. to cross-int. 3. I cannot say that said notes were forwarded to Chicago with the understanding on my part that they were to be taken up by a third party, who would pay me, or pay in for me, the amount of the notes.

JOHN DICKSON.

H. S. MONROE,
Of Counsel for Enos Ayres.
F. C. INGALLS,
Of Counsel for C. A. Richardson.

I, N. B. Wescott, of the city of Cincinnati, a notary public in and for the county of Hamilton, in the State of Ohio, do hereby certify that the said Henry Peachy and John Dickson, as witnesses in the causes above mentioned, previous to the commencement of this examination, were respectively sworn by me, as such notary public, to testify the whole truth in relation to the matters in controversy between the said complainants and defendants, at my office, No. 67 West 3d street, Cincinnati, Ohio, commencing at the time stated in the caption of this deposition; and that after the foregoing depositions were taken by me as aforesaid, and the interrogatories and answers thereto, as written, were read to said witnesses, that thereupon the same were signed in my presence by them as they appear, and sworn to by the said deponents before me, as such notary public, at the place aforesaid.

And I do hereby further certify that I am not of counsel for
505 any of the parties to the said suits, nor otherwise interested therein.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 15th day of October, A. D. 1878.

[SEAL.] N. B. WESCOTT,
Notary Public, Hamilton County, State of Ohio.

Cost of taking depositions, including eveything.....$20 00

Paid by McKoy & Pratt, solicitors for Henry J. Traver.

N. B. WESCOTT,
Notary Public.

(Endorsed:) Filed Oct. 20th, and opened for Mr. McCoy Oct. 31, 1878. W. H. Bradley, clerk,

506 Afterwards, to wit, on the fifth day of July, A. D. 1881, the said Charles A. Richardson, by his solicitor, filed in said clerk's office his appeal bond in said entitled cause, which said bond is in the words and figures following, to wit:

Appeal Bond.

Supreme Court of the United States.

CHARLES A. RICHARDSON *vs.* HENRY J. TRAVER, CLARISSA S. TRAVER, Michael Traver, Mary Jane Traver, Enos Ayres, Henry L. Hammond, L. C. P. Freer, Alvin Hurlbert, Gwynn Garnett, John Borden, William Borden, Michael Weidinger, Nathaniel S. Goss, James C. Hyde, Mary A. Pearson, Caroline E. Jones, Mary E. Bruce, Oswell A. Bogue, Hugh A. White, John Baldwin, Jr., Lockhart R. Carswell, Frederick A. Weage, Peter K. Dederick, Aaron M. Dederick, Philip W. Dederick, and Samuel A. Sawyer.	13171.	In Chancery.

Consolidated with the case of

HENRY J. TRAVER *vs.* MICHAEL TRAVER, JAMES C. HYDE, HENRY L. Hammond, Oswell A. Bogue, Enos Ayres, Mary Ann Pearson, Frank J. Smith, Alvin Hurlbert, John 507 Borden, William Borden, Frank J. Weidinger, N. S. Goss, Maria Shaw, L. C. P. Freer, Caroline E. Jones, Mary E. Bruce, Gwynn Garnett, and Charles A. Richardson.	14451.	In Chancery.

Know all men by these presents that we, Charles A. Richardson, of Chelsea, Massachusetts, and Charles H. Newell, of the same place, are held and firmly bound unto Henry J. Traver in the penal sum of twenty-five hundred (2,500) dollars, to be paid unto the said Henry J. Traver, his heirs, executors, and administrators, to which payment, well and truly to be made, we hereby bind our-

selves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals, and dated 27th day of January, A. D. 1881.

Whereas the above-named Charle A. Richardson hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the two above-entitled consolidated causes by the circuit court of the United States for the northern district of Illinois, sitting in chancery, on the 11th day of January, A. D. 1881.

Now, therefore, the condition of this obligation is such, that if the above-named Charles A. Richardson shall prosecute his said appeal to effect, and answer all costs and damages if he shall
508 fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

CHARLES A. RICHARDSON. [SEAL.]
CHARLES H. NEWELL. [SEAL.]

Witness to signatures—
C. W. TUTTLE.

I, Charles H. Newell, joint obligor in the above bond, on oath deposes and says that he is thirty-eight years of age, lives in Chelsea, Massachusetts, and owns unincumbered real estate in said Chelsea valued at six thousand dollars.

CHARLES H. NEWELL.

UNITED STATES OF AMERICA, *District of Massachusetts:*

BOSTON, *Jan.* 27, 1881.

Personally appeared the above-named Charles H. Newell and made solemn oath to the truth of the foregoing statement by him subscribed before me.

C. W. TUTTLE, [SEAL.]
Commissioner of the Circuit Court of the United States.

BOSTON, *Jan.* 29, 1881.

I have personally examined Charles H. Newell, the surety in this bond, and am of opinion that he is a sound & sufficient surety for the amount therein mentioned.

Feb. 5, 1881. JOHN LOWELL,
Circuit Judge.

Approved.
THOMAS DRUMMOND.

(Endorsed:) Filed Feb'y 5th, 1881. Wm. H. Bradley, clerk.

509 The opinion of the Hon. Thomas Drummond, judge of said court, in said cause is in the words and figures following, to wit?

Circuit Court of the United States, Northern District of Illinois.

HENRY J. TRAVER *vs.* MICHAEL TRAVER *et al.*

CHARLES J. RICHARDSON *vs.* HENRY J. TRAVER *et al.*

DRUMMOND, J.:

These two cases have been consolidated, as involving substantially the same controversy in relation to blocks one, two, and three of Traver's subdivision of part of the west half of the south-east quarter of section 22, town. 39, range 13 east, in Cook county.

The first bill was filed for the purpose of obtaining a release of block one from the operation of a trust deed or mortgage given by Henry J. and Michael Traver to John Dickson to secure four notes signed by the Travers, as part of the purchase money of the property, and the surrender of two of the notes said to be outstanding.

The second bill was filed to foreclose the mortgage given
510 to Dickson, and to pay these two notes which are claimed to be held by Dickson, or rather Richardson, as a subsisting incumbrance upon the property.

The facts connected with this controversy seem to be substantially these:

In December, 1870, the Travers purchased of Dickson about fifteen acres, being the tract of land heretofore described, and paid a small part of the purchase money, and gave four notes, payable in two, three, four, and five years, with eight per cent. interest, for $5,373.67½ each, which notes were secured by a deed of trust executed by the Travers on the premises to Enos Ayres, as trustee. Afterwards the Travers caused the land to be subdivided into lots and blocks, the blocks being one, two, and three. They also made sales of different lots to various persons.

In 1872 Henry J. and Michael Traver made an agreement in relation to the lots and blocks to this effect, that Michael should have all this property then owned by them, together with all the notes and assets growing out of the sales which they had made, except block one and lots 21 to 28, both inclusive, in block three, Michael agreeing to pay off the Dick-on mortgage, and to obtain a release of the same.

In pursuance of this agreement deeds were executed, and Michael, in September, 1872, conveyed to Henry J. block one, and eight lots in block 3. And Henry J. conveyed to Michael the remainder of the property. Michael was unable to pay the notes
511 due to Dickson, and in December, 1872, went to Hyde, one of the defendants, for the purpose of obtaining assistance in raising money to meet the notes that were soon to become due. The result of this interview was, that Hyde assumed the position of Michael Traver as to the property, and agreed to pay off the notes due to Dickson, and obtain a release of the whole property from the operation of the Dickson mortgage. Accordingly, Michael Traver turned over to Hyde the notes and assets which he had, and on the 28th of December, 1872, conveyed to him all the lots remaining unsold, and at the same time one Earl, to whom thirty

lots had been sold, conveyed them to Hyde. Both Henry and Michael Traver agree substantially as to these facts, and there is no testimony in the case seriously affecting the truth of this statement. Dickson agreed that if Hyde would pay the first two notes and the interest on the other two, that block three might be released, and Hyde claims that there was an agreement, that if three thousand dollars more were paid within a short time block two was to be released. Hyde paid the first two notes, and interest on the other two, with money obtained from Hammond and Bogue, and block three was released. In February, 1873, Hammond and Bogue were the agents, in Chicago, of C. A. Richardson, the plaintiff in the foreclosure suit, for the purpose of loaning money, and he furnished them $10,000, which they loaned to Hyde, and the money was secured by deeds of trust on lots in block two, on
512 the 28th of December, 1872, Hyde giving two notes, one for $6,000 and one for $4,000.

The instructions of Richardson to Hammond and Bogue were that the security for the debt must be on unincumbered real estate, and Hyde told them that the money was to [be] used *be* for the purpose of relieving block two from the incumbrance then upon it, and they believed Hyde would use the money for that purpose.

Hyde admits that he told them it was a first incumbrance, as he intended to pay the three thousand dollars and obtain the release of block two, which, however, he failed to do. Hammond and Bogue trusted Hyde, and informed their principal that the deeds of trust covered unincumbered real estate. The notes and deeds given to secure this loan were transmitted to Richardson by Hammond and Bogue.

It was not until January, 1875, that Hyde communicated to Hammond and Bogue the fact that the Dickson deed of trust was a subsisting incumbrance on block two as well as block one, and consequently that the deeds of trust given to Richardson on block two were subject to the Dickson deed of trust.

The last two notes due to Dickson were forwarded for collection, and by arrangement made between Hammond and Bogue and Hyde, the money was advanced among them, as they claim, to purchase, or to substitute for the notes due to Dickson, the notes
513 given to Richardson; in other words the Richardson notes were to be replaced by the Dickson notes for the benefit of Richardson, so that the security for this loan might be primary and not secondary.

This was done in consequence of representations made by Hyde and Hammond and Bogue to Mr. Ayres, the trustee, by which, on the 29th of January, 1875, a release was obtained of block two from the operation of the Dickson deed of trust, the result of which was, if the Dickson notes were unpaid and the release was effectual, to throw the liability entirely upon block one, and as Henry J. Traver insists, to his prejudice.

Preston, Keen and Company, bankers in this city, had the notes of Dickson for collection only, without any authority to sell or transfer them, and the money was paid to them. At the request

of Bogue, the notes were not cancelled or delivered to the makers, it being desired that they should be kept alive for the benefit of Hyde, and ultimately for the benefit of Richardson.

It was in consequence, as I understand of this release which was was made by Ayres of block two, as well as the release of a part of that block from the Richardson mortgage, that they were able to realize the money by which the amount due to Dickson was paid, and the substition claimed for the benefit of Richardson.

Ayres says (although this is denied by Hyde) that Hyde
514 represented to him that he was the owner of block one. Bogue had possession of the two Dickson notes and told him, as Bogue himself admits, that "in point of business" he was the legal holder of the Dickson notes. The result of this interview between Hyde, Bogue, and Ayres, was that block two was released, Bogue signing the release with Ayres.

Hammond and Bogue, and being informed by Hyde of the real situation of affairs, communicated, after much delay, (December 8th, 1875), the fact to Richardson, who seems to have acquiesced in all that was done in relation to the substitution of the Hyde notes for the claim originally held by him against block two; and he returned the $6,000 and $4,000 notes to Hammond & Bogue, who now hold them, and no question, therefore, as to the want of authority on the part of Hammond and Bogue can arise in this case; the only one being as to the effect on Henry J. Traver of the acts done by them in substituting, as claimed, the one paper for the other. He charges Hyde and Bogue with a fraudulent conspiracy, the result of which would be to make block one, of which he was the owner, the sole security for the two last notes due to Dickson, or if still in force, due to Richardson. It cannot be said that the evidence fully establishes this charge, though their conduct was indefensible. Undoubtedly Hyde either misrepresented the facts as to block two, or Hammond and Bogue, or he did not per-
515 form what he promised; that is, he did not use the money for the purpose he stated he would use it.

As to Bogue, the least that can be said, is, that he was not a faithful and careful agent, and loanded the money of his principal without that examination or information as to the condition of the property taken as security which he ought to have made or had in the case. After ascertaining the actual state of affairs, he seems to have done everything he thought necessary to place Richardson in as favorable a condition as possible in relation to the money which had been loaned by the firm of which he was a member.

There are various details connected with the case which may have more or less bearing upon it. Henry J. Traver had given some deeds of warranty against all incumbrances upon the property which was conveyed to Michael, and of course he was personally liable on the Dickson notes.

While it is difficult to ascertain the exact facts as to the transaction which took place in January, 1875, which, as it is claimed by Bogue, resulted in a substitution of the Dickson paper for the Hyde paper, Hyde's statement is, that in January, 1875, he paid

the $6,000 and $4,000 notes of Richardson, secured on block 2, and also paid enough to reduce the Dickson notes to the sum of $10,000; and that on his application Hammond and Bogue, they being in funds belonging to Richardson, and as it is to be inferred,
516 in consequence of his paying to them the notes which he owed to Richardson, paid off Dickson, and took his notes, and while Bogue says in one part of his testimong that at the time this transaction took place they had not funds of Richardson, and yet in another part he seems to corroborate Hyde in his statement, and to consider the Richardson notes paid, and Hammond's testimony concurs in this.

Before Hammond and Bogue communicated what had taken place to Richardson, they transmitted to him on June 30th, 1875, $400, on account, apparently, of a coupon which was due from Hyde on the loan made to him; which fact seems inconsistent with the impression sought to be given both in the testimony of Hyde and of Bogue of the actual character of the transaction of January, 1875, when, as Hyde says, this indebtedness was paid off, though Hyde and Bogue do not admit, and in fact rather deny, anything was said at the interview with Mr. Ayres, when they sought the release of block 2, as to Hyde's owning block one; yet Bogue admits that at that time he supposed Hyde owned it.

Hyde, who took the benefit of the bankrupt law, scheduled
517 as a part of his indebtedness, long after January, 1875, the notes owed to Richardson, and which were secured by the deed of trust on block two, thus apparently admitting that they were then outstanding as a debt against him.

A portion of block two was released from the Richardson incumbrance as part of the general plan to enable them to raise money. It does not clearly appear whether the whole block was released, though that seems to be the inference from the testimony of Hyde and Bogue; but a release made by Hammond, the trustee of the Richardson mortgage, on the 9th of March, 1875, of lots 30 to 36, inclusive, of block 2, is in evidence. This was security for the $6,000 note. There were two deeds of trust given to Richardson, in both Hammond being trustee, and both dated December 28, 1872, the $6,000 deed lots 10 to 39, inclusive, the other, (the $4,000 deed,) lot 1 to 9, inclusive, and 40 to 48, inclusive, all block 2. But Richardson admits in his amended answer to the bill of Henry J. Traver that all of the lots of block 2 which had been given to him as security for his loan had been released, except lots 20 to 29, inclusive.

It is rare that a case more complicated in its facts arises in a court of justice. It grows out of a practice common in the history of real property in Chicago of a person making a purchase
518 of real estate, paying a small part of the purchase money, and then giving a mortgage to secure the balance, and as though he were the owner of the property without encumbrance, going on, not only to sell out different parcels, taking security for the purchase money, but in many instances entirely changing its character, as in this case, dividing it off into blocks and lots, and selling out

some of the lots, and then again asking for releases of different parts of the land mortgaged by him as payments are made in part of the original purchase money. That is substantially the history of this case.

These appear to be the questions in the case whether, as against Henry J. Traver, the release made of block 2 was operative, and whether the money which was paid to Preston, Kean & Co. for Dickson was a payment of the last two Dickson notes, thus relieving block 1, as well as block 2, from the operation of the Dickson deed of trust, or they were left outstanding as a lien on the property, and Richardson was subrogated to Dickson's rights.

There is no objection made to the release by the trustee of block 3. This was in pursuance, in part, of the agreement made between Henry J. and Michael Traver, and between the latter and Hyde, and in pursuance, further, of the powers of Hyde to relieve that as well as block 2, which was given as a security to Richardson
519 from the Dickson encumbrance. It is unnecessary, therefore, to discuss the release of block 3 further, as Henry J. Traver and Hyde, who represented Michael Traver and Dickson, all agreed to the release.

At the time, therefore, that this block was released, in February, 1873, the first two notes of the Dickson encumbrance had been paid, and there remained the last two notes, which at that time were a subsisting encumbrance on block 1 and 2.

Some criticism has been made upon the nature of the contract between Henry J. and Michael Traver, but there does not appear any testimony in the case to warrant the court in holding that was an invalid contract, and we must proceed with the investigation upon the assumption that it was binding upon the parties to it, and upon all who came in with rights subject to that contract. As the result of the contract, Michael had transferred all his interest in block 1 to Henry J. Traver. That deed was recorded, and, of course, the grantee was clothed with the absolute title to block 1, subject to the Dickson deed of trust. Ayres, the trustee, then held the title for the security of the last two notes to block 1 and block 2. Block 3 being released, Michael having parted with all his interest in the property, and being represented by Hyde, who had borrowed money of Richardson and given the mortgage on block
520 2, it would seem there could be no act done affecting the interests of Henry J. Traver without his consent, express or implied. Michael Traver states that he had an understanding with his brother, Henry J., that he might obtain releases from Dickson. I think that must be understood to mean that they should be consistent with Henry's interest in the property, and so as not to jeopard- his rights in any way. It is claimed that because Henry knew of the release of block 3 he should have notified Ayres of the existence of his rights in block 1, and that no further release should be made without his consent; but did the fact that Henry knew or even assented to the release of block 3 authorize the trustee or the other parties to procure a release of block 2 without his consent,

the effect of which would be, if valid, to throw the whole of the Dickson encumbrance upon block 1? I think not.

It is insisted that there were deeds from Henry J. and Michael Traver, with covenants of warranty against all encumbrances upon the land, and therefore that he is estopped from claiming that block 2 should bear its part in relieving the Dickson encumbrance. I cannot see that necessarily follows. Undoubtedly, in a proper case, he might be liable on his covenants of warranty, but the question here is as to an act of the parties, in connection with the
521 trustee Ayres, in discharging block 2 from a subsisting encumbrance. And also whether or not that encumbrance has been discharged by a payment of the debt. And the facts connected with the release of block 2 show what was the view taken by the parties, and particularly by the trustee, at the time he executed the release. It was done on the assumption that Hyde was the owner of block 1, and therefore assented to the release, so as to throw the whole burden upon that block. As to the second question, when Hammond and Bogue ascertained in 1875 that block 2, which was the only security Richardson had for his loan, was still subject to the Dickson encumbrance, their object was to devise some means by which the Richardson deed of trust should become primary instead of secondary security, and accordingly they pursued a course which they supposed made Richardson the owner of the last two of the Dickson notes. The money which had been obtained from Richardson, through Hammond and Bogue as agents, had been used by Hyde to aid in paying off the first two of the Dickson notes, and, as we have seen, instead of procuring a release of block 2, he had caused the release of block 3. This was so far advantageous to Henry J. Traver, that if left free and unincumbered, the 8 lots of block 3 which had been conveyed to him by Michael, but in what now took place
522 Henry J. Traver took no part. The third Dickson note fell due in December, 1874, and, not being paid, the other was declared due by Dickson, in conformity with the terms of the deed of trust, and they were both forwarded to Preston, Kean & Co. for collection. There was no authority whatever given by Dickson, or by the bank who acted as his agent, and transmitted the notes to Preston, Kean & Co., to sell or transfer them. The plan devised by Hammond and Bogue and Hyde was to substitute for these notes of Dickson the notes held by Richardson and secured upon block 2, and the money was raised, partly by Hyde and partly by Hammond and Bogue, to pay the amount due on the Dickson notes, to accomplish which it became necessary to release block 2, and some of the lots of block 2 were used for the purpose of raising the money, and it was paid to Preston, Kean & Co. for Dickson.

It is insisted on the part of Richardson, that under the facts they had the right to make this payment and to keep alive and outstanding these Dickson notes.

Indeed it is insisted by Hyde and Hammond & Bogue, and they so stated in their testimony, that the Richardson notes, one of $6,000 and the other of $4,000, were paid, and that the money which

523 was thus obtained was used to purchase, as it is claimed, the Dickson notes. Had they a right to do this, and was this in fact a purchase? If so, from whom was the purchase made? Dickson never authorized the purchase. He was not a party to any such contract, and it is not pretended that Preston, Kean & Co. had any authority to make, or that they, in fact, did make, such a contract. The only position that can be taken under the circumstance is that, from the situation of the case, they had the right to substitute for the money which they paid to Dickson his notes, and to treat them as still unpaid, for the benefit of Richardson.

Something has been already said to the status of the last two of these notes at the time the money was paid to Preston, Kean & Co., but it may be proper to state further, in order to present the matter more distinctly, that the presumption from the evidence is that Dickson transmitted the notes to Chicago at the request of Hyde, and on his assurance that they would be paid, and in the instructions which were sent to Preston, Kean & Co. by the direction of Dickson, it was stated that the trustee, Ayres, would call at their office and examine the trust deed and release, and that if he said they were all right, then Hyde was to be notified that they held the paper for payment, and the clerk of Preston, Kean & Co. states that when the 524 money was paid, Mr. Bogue, who made the payment, said that he did not wish the notes cancelled, as "he would carry [them] for Hyde." But, independent of this, if the statement made by Hyde and Hammond & Bogue is true, that the Richardson notes were paid, then Richardson became a stranger to all matters connected with the property, and had no more right than any outsider to have anything to do with the Dickson notes, and therefore the doctrine of subrogation would not apply.

The natural course would have been for the notes to be returned to Henry J. and Michael Traver, who made them and were liable upon them. At the request of Bogue this was not done; but it will be recollected that Hyde was in the same position as Michael Traver, who was bound to his Brother Henry to relieve the property from the Dickson encumbrance, and therefore Hyde was only carrying out the obligations which he had entered into with Michael Traver in paying the Dickson notes.

From the best consideration I have been able to give this part of the case, it seems to me that the facts did not authorize them to take these notes and consider them as an outstanding debt secured by the deed of trust given by the Travers on block one, but that, on the contrary, the legal effect of what they did was, as to block one, to pay the Dickson notes, and so discharge it from the 525 Dickson encumbrance, certainly as a primary lien. It would be a natural wish, in the mind of every chancellor, to protect any equities which Richardson may have, but the question, after all, is, whether he has really any equities on the facts of this case as against block one and Henry J. Traver.

The original fault was that of his own agents in violating the explicit instructions which he gave to them to loan the money only on unencumbered property, and in those agents trusting to the repre-

sentations of Hyde. They knew at the time they trusted Hyde with the money that it was not unencumbered property. So that, in any view I can take of this case, it seems to me that the bill of foreclosure, which has been filed by Mr. Richardson to enforce for his benefit the Dickson deed of trust given by the Travers, and to pay these last two notes, cannot be sustained on the theory on which I understand it proceeds, namely, to enforce against block one as a supposed lien for his payment of the last two of the Dickson notes.

It follows, as a necessary consequence from what has been said, that Henry J. Traver is entitled to relief upon his bill to this extent; that block 1, held by him, cannot be used, under the circumstances of this case, as a fund, out of which to pay any portion of the Dickson notes, if indeed they are outstanding at all. From
526 the participation of Bogue in the scheme of Hyde, and the connection of Hammond & Bogue with Richardson, it would seem inequitable to enforce the Dickson notes in any form against Henry J. Traver. He had transferred to Michael what was considered by the latter as an ample fund to meet the Dickson notes, and there can be no doubt that a large part of that fund was used for that purpose; but it is not necessary that the court shall go further than already intimated as to the bill filed by Traver.

Correct. T. D.

527 NORTHERN DISTRICT OF ILLNOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in said entitled causes, consolidated, wherein Henry J. Traver is complainant and Michael Traver *et al.* are defendants, and Charles A. Richardson is complainant and Henry J. Traver *et al.* are defendants, as appears from the records of said court, now in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at my office, in Chicago, in said district, this twenty-eighth day of September, A. D. 1881.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Endorsed on cover: N. Illinois, C. C. U. S. No. 397. Charles A. Richardson, appellant, *vs.* Henry J. Traver. Filed October 13, 1881.

112-423

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 85.

CHARLES A. RICHARDSON,

Appellant,

vs.

HENRY J. TRAVER.

(Consolidated with CHARLES A. RICHARDSON, *Appellant*, vs. HENRY J. TRAVER, MICHAEL TRAVER, and others.)

BRIEF AND ARGUMENT FOR APPELLANT.

FREDERIC C. INGALLS,

Of Counsel.

Curtiss & Childs, Law Printers, 167 Genesee St., Utica.

Supreme Court of the United States.

No. 85.

CHARLES A. RICHARDSON, APPELLANT,

vs.

HENRY J. TRAVER, APPELLEE.

BRIEF AND ARGUMENT FOR APPELLANT.

STATEMENT OF FACTS.

This is an appeal from a decree in equity of the Circuit Court of the United States for the Northern District of Illinois.

In December, 1872, Charles A. Richardson, a citizen and resident of the State of Massachusetts, remitted to Henry L. Hammond and Oswell A. Bogue, then doing business as loan and financial agents, under the name of Hammond and Bogue, at Chicago, in the State of Illinois, the sum of ten thousand dollars, to be invested on his account, in a loan, upon first class real estate security. Mr. Richardson's express instructions were, that the securities to be taken should be primary liens on real estate. The selection of the securities and all details were left entirely to the discretion of Hammond and Bogue. They proceeded to loan the money, taking therefor two promissory notes, bearing date December 28, 1872, made by one James C. Hyde, one for six thousand and the other for four thousand dollars, both payable in three years after their date, to the order of one Michael

Traver, with interest at eight per cent. per annum, indorsed by the payee, and made payable to the order of Charles A. Richardson. These notes were secured to be paid by two deeds of trust, executed by Hyde, the maker of the notes, to Henry L. Hammond as trustee, conveying in fee simple with full covenants of warranty and against all incumbrances, in trust to Hammond, certain lots of land, which together comprised a tract known as Block number Two of Traver's Subdivision in Chicago. The deeds of trust purported on their face to be first liens on the land conveyed, and to have been given to secure the unpaid part of the purchase price of the premises. They were duly recorded, and with the notes, were forwarded to Mr. Richardson by Hammond and Bogue, and by them represented to be a first and paramount security on the land described in the deeds. Unknown to Mr. Richardson, there was then outstanding a prior purchase money incumbrance resting upon the whole of Traver's Subdivision, which consisted of three blocks, numbered respectively, One, Two and Three. This prior incumbrance was a deed of trust, which had been executed by Henry and Michael Traver, to one Enos Ayres as trustee, December 19, 1870, to secure the payment of their four promissory notes for the aggregate sum of $21,494.70, bearing even date with the deed, and payable to one John Dickson, in two, three, four and five years after date respectively, with interest payable semi-annually, at eight per cent. per annum. The existence of this purchase money incumbrance owned by Dickson, was known to Hammond and Bogue at the time they made the loan for Mr. Richardson, but they loaned the money to Hyde for the express purpose of being applied as a payment to Dickson of an installment of this incumbrance, and with the understanding and upon the condition, that a release should be simultaneously executed, whereby Block number Two of Travers' Subdivision, should be relieved from the Dickson incumbrance, and stand as a first security for Mr. Richardson's loan. The money so loaned by Mr. Richardson was immediately applied accordingly by Hyde, as a payment to Dickson, but Hyde, instead of procuring a release of Block *Two*, agreeably to the con-

dition of the loan, obtained a release of Block number *Three* of Travers' Subdivision, from the lien of the Dickson incumbrance, so that in fact Mr. Richardson was left in the position of a junior incumbrancer on Block Two, with the senior incumbrance, reduced by the amount loaned by him and paid to Dickson, resting on Blocks One and Two. Hammond and Bogue understood that the release had been made in accordance with the condition of the loan, and had no actual knowledge that Mr. Richardson's security was not a first lien as they had represented it, until more than two years afterwards, when on or about January 15, 1875, Hyde suddenly informed them of the real facts respecting the release, and that the Dickson mortgage still remained a senior incumbrance on Block Two, which they had taken as security for Mr. Richardson; that Dickson was about to foreclose, and that it would be necessary for them to purchase that mortgage in order to save Mr. Richardson's security.

The terms of the trust deed which secured the Dickson notes were such, that upon default in the payment of either note, or any installment of interest when due, the holder was empowered to declare the whole sum instantly payable, and to require the trustee to sell, on giving twenty days' notice by publication, and from this sale no right of redemption existed. One of the two remaining Dickson notes was then overdue, and Dickson was in fact preparing to foreclose immediately, under the powers contained in the deed of trust. Hyde represented that if Hammond and Bogue would agree to purchase the Dickson mortgage, and hold the same in behalf of Mr. Richardson, so that an immediate foreclosure might be avoided, he would pay sufficient to reduce the Dickson incumbrance to $10,000, and that he could secure a purchaser, one Nathaniel S. Goss, who would take nineteen of the lots in Block Two, and pay the sum of six thousand dollars in cash therefor, upon receiving a conveyance, with releases, giving him a clear title free from the liens of all the incumbrances; and that Goss was willing to advance this money, which could be paid over at once into the hands of Hammond and Bogue, provided they would furnish the bal-

ance of the money required to purchase the Dickson mortgage, and take up and hold the same, and give immediate releases for Mr. Goss.

Hammond and Bogue, without corresponding with Mr. Richardson, decided for his protection in the emergency, to adopt this plan, and purchase the Dickson mortgage. When they agreed to this, Mr. Goss paid over the sum of six thousand dollars, which was placed in the hands of Hammond and Bogue, the condition being that the nineteen lots purchased by Mr. Goss should be immediately released from the liens of all the incumbrances. Hammond and Bogue then furnished of their own funds an amount, being nearly $6,000, sufficient with the $6,000 paid by Mr. Goss, to make up the sum due on the Dickson mortgage, and went to the bank where the mortgage and notes were held for collection, and paid for and took them up, receiving the trust deed and the two notes, in their original form and condition, duly indorsed by Dickson. Mr. Bogue stated to the Bank officer, that he did not wish to have the notes cancelled, as he intended to carry them; and they were not cancelled. The Bank officer, Carton, testified on his cross-examination, that he understood that Mr. Bogue was carrying the notes; that his recollection was that Mr. Bogue said that *he* was paying for the notes, and not Mr. Hyde. The money received by the bank for the notes was remitted to Dickson at Cincinnati, through the bank there, which had forwarded them for payment under his instructions.

Mr. Hammond then, as the trustee in the two deeds of trust first taken by Mr. Richardson, released the nineteen lots which had been conveyed to Goss from the lien of those deeds, and Mr. Bogue, representing the holder of the Dickson mortgage, went with Mr. Hyde to Ayres the trustee, and gave his consent to the release of Block Two from the lien of that mortgage, thereby discharging the nineteen lots purchased by Mr. Goss from the lien of all the incumbrances, in compliance with the condition upon which Hammond and Bogue received the $6,000 paid by him. Nothing more was done at this time. Afterwards Mr. Hyde made sales of vari-

ous parcels of Block Two, and obtained loans on the security of other parcels, and in that way made conveyances of all the remaining part of that block. The proceeds of these sales and loans were turned over to Hammond and Bogue from time to time, as the sales and loans were made, and as these payments were received, Mr. Hammond as trustee executed releases, to which the several purchasers and makers of loans were entitled, under the conditions upon which their purchases and loans were made, of the several parcels from the deeds of trust first taken by Mr. Richardson. By this means, all the moneys which had been advanced by and in behalf of Mr. Richardson beyond the sum of ten thousand dollars were repaid, the original security received by Mr. Richardson was discharged, and Hammond and Bogue as his agents, held the Dickson purchase money mortgage still remaining an incumbrance on Block One, as a security in its stead.

Hammond and Bogue acted in the transaction, under a general authority from Mr. Richardson to do all things necessary to preserve and protect his interests, and their particular act in taking the Dickson mortgage for his security, in place of the former security when they discovered its true character, was ratified by him.

TRAVER'S BILL.

In the month of April following, Henry J. Traver filed his bill in chancery, in the Circuit Court of Cook County, Illinois, against Michael Traver and others, setting forth the purchase by Henry and Michael Traver, from Dickson, in December, 1870, of the tract afterwards known as Traver's Sub-division; the execution of their four promissory notes to Dickson for $5,373,67 each, secured by the deed of trust to Enos Ayres, as trustee. That in September 1872, Henry and Michael agreed to the effect that Michael should convey all his interest in Block One and in eight lots of Block Three to Henry, and obtain a release of those parts so to be conveyed from the lien of the said trust deed; and that Henry should convey to Michael all the remaining unsold part of Blocks Two and Three in Traver's Sub-division; that in pur-

suance of such agreement, Henry conveyed to Michael by deed, December 20, 1872, all the unsold part of Blocks Two and Three, except the eight lots in Block Three, and Michael also conveyed to Henry Block One and the eight lots aforesaid; that it was understood by the agreement that if Michael should be unable to pay the notes to Dickson as fast as they matured, he should manage so as to obtain the release of Block One, and the eight lots in Block Three; that afterwards Michael, being unable to pay the notes, agreed with Hyde to the effect that he would convey to Hyde all his interest in the Sub-division, and that Hyde should carry out Michael's agreement with Henry; and in pursuance of this agreement Michael conveyed to Hyde, December 28, 1872, all his remaining interest, and Hyde paid two of the Dickson notes, and procured the release of Block Three from the Dickson incumbrance, which left that remaining a lien on Blocks One and Two. That in February, 1875, Hyde confederated with Bogue to defraud Henry, and procured from Dickson the two remaining Dickson notes and deed of trust, and placed them in the hands of Bogue as apparent purchaser and owner; that Bogue had full knowledge of the agreements between Hyde and Traver, and fraudulently claimed to be their owner; that Bogue confederated with Hyde to defraud Henry, by procuring from Ayres, the trustee, a release of Block Two from the lien of the trust deed, and Hyde falsely represented himself to be the owner of the equity of redemption in both Blocks One and Two. That if Bogue invested any money therein he loaned it to Hyde, and holds Hyde's notes therefor, and took the Dickson notes and trust deed as collateral security. Claims that Henry became the first alienee of Michael as to the undivided half of Block One, and entitled to have those parts of the Sub division, subsequently conveyed by Michael, exhausted before Block One should be sold to satisfy the Dickson incumbrance; that said releases having been made without the knowledge or consent of Henry, Block One is equitably released from the lien of the trust deed; that Ayres in executing the release was guilty of negligence amounting to actual fraud, and ought to pay to complainant all damage thereby sustained; that

Hyde and Michael are of doubtful responsibility; that as to Hyde, the release of Block Two should be set aside, and as to purchasers since Sept. 5, 1872 without actual knowledge of the agreement between Hyde and Michael, the Ayres trust deed should be held a first lien on the undivided half of the premises respectively purchased by them.

Prays that Hyde, Ayres and Bogue be decreed to release Block One, and surrender the Dickson notes, or if the case will not warrant such decree, that the releases as to Blocks Two and Three be set aside, and the trust deed declared a first lien on Blocks Two and Three, except the eight lots, and the same be sold before Block One; and that Bogue and Ayres be decreed to pay the complainant all damages by him sustained, and that an account be taken of such damages.

Prayer for general relief. The oaths of defendants to their answers were waived.

By amendment to the bill made in December, 1876, it was alleged that defendants assert that the two notes made by Henry and Michael to Dickson, are owned by Charles A. Richardson, who is the holder of the same for value. Charges that such allegations are untrue, and that whatever interest Richardson acquired therein was obtained through Bogue as his agent, and that he is chargeable with notice of the fraudulent acts of Bogue. That when the release was obtained of Ayres, Bogue stated that he was the legal holder of the notes. Alleges that said notes had been properly endorsed by Dickson, so as to vest the legal title in Bogue, and by means of this and the false representation of Hyde being the owner of the equity of redemption, said Bogue and Hyde procured the release from Ayres. Charges that the release was never in force, because not properly delivered. Claims that defendants are estopped to deny that Bogue was the owner of the notes. Charges that Richardson is confederating with Hyde and Bogue to defraud Traver. Prays that Richardson may be made a party and answer, his oath being waived.

ANSWER OF HYDE.

The answer of Hyde states the fact to be, that Henry and Michael purchased the land of Dickson for $23,883, of which they paid only one-tenth, or $2,388, and gave their four notes for the balance. That neither Henry nor Michael had any means to pay the notes, and when the first note matured Michael applied to him for assistance. But he could do nothing because no acceptable security could be given on the land, on account of the prior lien of the Dickson incumbrance. That Henry and Michael had made some sales of parcels of Block Three, and received part of the consideration in cash and the balance in notes and mortgages, and had given their warranty deeds to the purchasers, with covenants against incumbrances, expecting to be able to procure releases from Dickson, but that they could not obtain releases of parcels of the land from Dickson, and for that reason could do nothing further, and Dickson was about to foreclose under his deed of trust. That Michael then proposed to convey his interest in the property to Hyde, if the latter would assume the payment of the Dickson notes, and undertake to manage the property so as to prevent a forced sale by Dickson; and at the urgent request of Michael, Hyde visited Dickson at Cincinnati. Dickson informed him that he had given orders to his attorney to foreclose the deed of trust, and that he would enter into no agreement with the Travers, as he had no confidence in the performance by them; but on learning that Hyde contemplated taking hold of the property, he finally agreed that if Hyde would pay the two notes first maturing, and endorse the other two, and procure the endorsement of Snyder & Lee of Chicago, he would revoke his order to foreclose, and consent to release a part of the property. That Hyde then returned to Chicago, and accepted Michael's proposition; it being expressly understood that Hyde was to procure releases from Dickson of such parcels of the land as he might be able to sell or dispose of whenever he should so desire, and before obtaining releases of Block One, as it was contemplated that he should procure the means to carry out his agreement from the proceeds of such

parcels as he might sell or dispose of in Block Two, and would necessarily require releases. That without such express understanding he would not have taken hold of the matter at all, as the inability of the Travers to procure such releases was the cause of the difficulty they were then in. That in pursuance of the agreement, Michael executed a deed conveying to Hyde, Lots One to Nine, and Lots Forty to Forty-eight (inclusive) in Block Two, and twelve lots in Block Three, and also delivered to him a deed, executed by one Charles M. Earl, conveying Lots Ten to Thirty nine (inclusive) in Block Two. No part of the agreement between Hyde and Michael was in writing, except as evidenced by the deeds. Hyde then procured a loan of $10,000 from Charles A. Richardson, through the agency of Hammond and Bogue, on the two notes for $6,000 and $4,000 respectively, made by him and payable to the order of Michael Traver, by whom they were endorsed, and secured by two deeds of trust on Block Two, executed to Hammond as trustee. That when this money was obtained from Mr. Richardson, it was paid to Dickson, the two Dickson notes first payable were cancelled, and Hyde, at the same time, procured a release of Block Three, whereby Henry and Michael were relieved from liability on their covenants against incumbrances in the deeds which they had given to purchasers of lots in that block, and the impending sale of the whole property by Dickson was averted. That the facts in regard to the giving of the notes and deeds of trust to Mr. Richardson were well known to Henry Traver, who interposed no objection thereto, or to the release of Block Three, but expressed satisfaction therewith. That Hyde, afterwards in 1873, erected dwellings and made other imimprovements on Block Two. That in December, 1874, one of the two remaining Dickson notes fell due, and Hyde had no means to pay it; money was very difficult to obtain, and he proposed to Hammond and Bogue that he would pay a sufficient amount to reduce the Dickson encumbrance to $10,000, and that they should purchase it and hold it in behalf of Mr. Richardson, and receive payment of the first notes given to Mr. Richardson, and release the deeds of trust securing

them, retaining the Dickson notes and deed of trust as his security. This they finally did, and Block Two was released in order to enable him to procure money by a sale of property in that block, which he could not do without such release. That Hammond and Bogue purchased the two Dickson notes in behalf of Mr. Richardson, who now holds the same, and that the notes first given to Mr. Richardson were paid.

Avers that he had full right, under his agreement and understanding with Michael, to procure the release of Block Two. Denies that it was done with any intent to injure Henry Traver. Denies all charges of fraud and misrepresentation, and says that he did not seek to connect himself with the Travers, or with the property, but was sought by Michael, and by him urged to enter upon said transactions. That he has, to the best of his ability managed the property for the advantage of the Travers and himself, and in accordance with his agreement, and has repeatedly saved it from sale under the Dickson mortgage. Denies all charges of combination and confederacy, etc.

ANSWER OF HAMMOND AND BOGUE.

Hammond and Bogue, in their answer, state that they have no personal knowledge respecting the alleged purchase of the land in question by the Travers from Dickson. Admit that Henry and Michael executed the four notes to Dickson, secured by the deed of trust, in part consideration for the land. Aver that they had no knowledge respecting the alleged agreements between Michael and Henry, and between Hyde and Michael, and on their information and belief, deny that any such agreements were made as stated in the bill. Admit that Henry conveyed all his interest in Block Two to Michael, who afterwards conveyed to Hyde. Allege that they, as the agents and in behalf of Charles A. Richardson, loaned the sum of $10,000 to Hyde and took the two notes for $6,000 and $4,000 respectively, with the deeds of trust, to secure said loan. Defendant Bogue denies that he at any time entered into any combination with Hyde

to defraud Traver. Denies that any fraudulent arrangement was made to place the Dickson notes and deed of trust in his hands as apparent owner. Alleges that Hammond and Bogue, in purchasing the two Dickson notes last payable, were acting as the agents for, and in behalf of said Richardson, who became the legal and equitable owner of said notes. That the two notes first given to Mr. Richardson were paid, and Hammond and Bogue, at the request of Hyde, consented to the release of said Block Two; but they at that time believed said Hyde to be the owner of the equity of redemption in both Blocks One and Two, and knew nothing of said alleged agreements between Henry and Michael, or between Michael and said Hyde. Denies that Hyde made any agreement whereby the land conveyed to him was or is charged with any trust or confidence under the Statute of frauds. Denies all charges of unlawful combination or confederacy, etc.

ANSWER OF AYRES.

Enos Ayres, the trustee, answers that he has no knowledge as to the alleged agreements between the Travers and between Hyde and Michael, except as obtained from the bill. He executed the release of Block Three with the consent of Dickson. Knows nothing of any alleged conspiracy between Hyde and Bogue. In January 1875, Hyde requested him to execute a release of Block Two, which he did with the consent and request of Bogue, who was then in possession of the two remaining Dickson notes, and represented himself as owning them. Has no knowledge of the agreements, contracts or transactions between the Travers and Hyde. Denies all charges of fraud or fraudulent intent. Denies that complainant is entitled to the relief, or any part thereof, claimed by the bill.

After Traver's bill was amended, making Mr. Richardson a party defendant, he filed a plea to the jurisdiction of the State Court, alleging the pendency of a suit in equity in the Circuit Court of the United States for the Northern District of Illinois, upon a bill previously filed by him against Henry Traver and others, to foreclose the mort-

gage known as the Dickson incumbrance, in which suit process had been served prior to the time of the filing of said amended bill in the State Court. The case pending in the State Court was then, on petition of Mr. Richardson, removed into the Circuit Court of the United States, and afterwards, by agreement of the parties, the plea to the jurisdiction was withdrawn, and the two suits were consolidated.

ANSWER OF RICHARDSON.

The answer of Charles A. Richardson to Travers' bill was filed after that suit was removed into the United States Court, stating that he has no knowledge respecting any of the alleged agreements or transactions between the Travers and James C. Hyde, and denies that he is in any manner connected with or concerned in the controversies between Henry and Michael and Hyde, growing out of any of the alleged agreements. He is informed and believes that Bogue consented to the release of Block Two, but denies that he, in giving such consent, intended any fraud or injury to complainant, or that Bogue is chargeable with any wrong in giving such consent. He has no personal knowledge respecting the release, and denies that he, through Hammond and Bogue as his agents or otherwise, had notice of any alleged equities of complainant which ought to have prevented him from consenting to such release. He has no knowledge of any fraudulent combination between Hyde and Bogue, or of any intent on the part of Bogue to injure, defraud or prejudice complainant, and denies all such allegations, and denies that defendant has ever entered into any combination to wrong or injure complainant. Mr. Richardson further states that in December 1872 he remitted the sum of $10,000 to Hammond and Bogue, who loaned it to Hyde, taking the two notes secured by deeds of trust, payable to and indorsed by Michael Traver. That these trust deeds were, by their terms, expressly declared to be first and paramount liens, and each contained the usual covenants of warranty and against all other liens and incumbrances. That Hyde was then the owner in fee of the land conveyed

by the trust deeds, being said Block Two, and that he had acquired his title thereto by two deeds of warranty, one executed by Michael Traver and wife, conveying eighteen of the lots, and the other, executed by Charles M. Earl and wife, conveying the remainder of the block. That each of these deeds contained full covenants of warranty, and against all incumbrances. That said Earl derived his title so conveyed to Hyde by a deed of warranty, executed by Henry J. Traver and Michael Traver and their wives, dated September 2, 1872, which contained full covenants of warranty, and a covenant that the premises conveyed were free and clear of all former and other grants, bargains, sales, liens and incumbrances of what kind or nature soever. That said Michael derived his title to that part of the land conveyed by him to Hyde, as follows: By the deed executed by John Dickson, December 19, 1870, all the land known as Traver's subdivision was conveyed to Henry and Michael Traver as tenants in common. Afterwards, Dec. 20, 1872, Henry Traver and wife conveyed to Michael Traver, all their interest in that part of the land described in the deed from Michael to Hyde. That in his said deed to Michael, Henry Traver covenanted among other things, with said Michael, his heirs and assigns, that he had not made, done, committed, executed or suffered any act or acts, thing or things whatsoever, whereby or by means whereof, the said premises therein described or any part thereof, then were, or at any time thereafter should or might be impeached, charged or incumbered in any way or manner whatsoever. That when this defendant made the loan on the security of the two trust deeds on Block Two, he had no actual knowledge whatever, of the existence of any prior or superior incumbrance on the land, and fully believed his own security to be a first and paramount lien, but that in fact the incumbrance made by the Travers to Dickson remained in force, and was then a senior incumbrance on the whole subdivision; and defendant is informed and believes, that Hammond and Bogue, while receiving the security in behalf of this defendant, as a paramount security, and treating it as such, were, nevertheless, aware of the existence of the prior incumbrance, but that the money

was loaned for the purpose of being applied in part payment of the Dickson mortgage, which was to have been released as to that part of Travers' Subdivision described in the trust deeds given to secure this defendant. That the money was so applied, and said land should have been released, in compliance with the condition upon which it was loaned. That as defendant is informed and believes, Hammond and Bogue understood and believed that such release had been made, until long afterwards, in January, 1875, they discovered that Block Three, instead of Block Two, had been released, and in the belief that the security of this defendant was in jeopardy, took the Dickson notes and deed of trust in behalf of this defendant, in order to his protection, as they were authorized in such case to do. That Bogue, at the instance and request of Hyde, but without any intent or purpose to wrong or injure complainant, and without notice of any alleged equity on his part, consented to the release of Block Two, from the lien of that incumbrance. Avers that Hyde had authority to procure the release. That afterwards, Hammond as trustee, made the releases of the deeds of trust originally given to secure this defendant. Avers that during all the time in question, this defendant resided in the State of Massachusetts, at a distance from Chicago; knew but very little personally in regard to Chicago securities, and relied wholly upon Hammond and Bogue to attend to his interests there, and see that they were at all times properly and adequately secured, and he has approved and ratified the action of Hammond and Bogue, in taking the Dickson security as aforesaid. Avers that at and before the time of the taking of the Dickson incumbrance by this defendant, Henry and Michael were both bound by the covenants of their said deeds, to protect defendant against said Dickson incumbrance. Denies that any such agreements were made between complainant and Michael, or between Michael and Hyde as are alleged, but that if such alleged agreements were made, they were mere parol agreements or understandings, no note or memorandum of which was ever made in writing, or signed by any of the parties thereto, or by any person thereunto lawfully authorized. That if such alleged agreements were

made, they were made respectively before the execution of said deeds from said Henry to Michael, and from said Michael to Hyde, alleged in said bill to have been executed in pursuance of such agreements. That said alleged agreements are wholly inconsistent with, and repugnant to the covenants and agreements in said deeds contained, and void for such repugnance, and because they were parol agreements which are sought to be used to override the covenants and acknowledgments contained in said deeds; and that they are also nugatory under the statute of frauds of the State of Illinois; whereby it is provided, that no action shall be brought to charge any person upon any contract for the sale of any lands, tenements or hereditaments, or any interest in or concerning them for a longer term than one year, unless such contract, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized in writing (R. S., c. 44, § 3, Gross' Comp. 3d ed. 1861, p. 302), and also, that all declarations or creations of trusts, or confidences of any lands, tenements or hereditaments, shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be wholly void and of no effect. (Id. § 5, p. 303.) Avers that complainant is and ought to be estopped by his deeds aforesaid, from disputing or contesting the right of this defendant to take the Dickson notes and deed of trust, and hold the same for the security of his said loan, and to foreclose the same against said Block One of Travers' Subdivision. Denies all unlawful combination, &c.

RICHARDSON'S BILL.

On the 28th day of December, 1875, Charles A. Richardson filed his bill in the Circuit Court of the United States for the Northern District of Illinois, to foreclose the deed of trust executed December 19, 1870, by Henry and Michael Traver. The bill is in the ordinary form of a bill of foreclosure, alleging that two of the notes secured by the deed, payable respectively in two and three years, were paid and

discharged in the hands of John Dickson, and that complainant is the holder and owner of the other two notes, and that there is due to complainant thereon the sum of $10,000, with interest according to the tenor of the notes, from January 15, 1875. States the fact of the subdivision of the land by the Travers into three blocks; Block One containing 43 lots, Block Two containing 48 lots, and Block Three containing 44 lots; then sets forth the facts respecting the conveyances by the Travers and by Earl. Alleges that while the notes were owned by Dickson, Block Three was released from the lien of the trust deed, and that afterwards, about February 19, 1875, Block Two was released, but avers that Henry Traver disputes the validity of that release, and that he claims it ought not to be deemed a good release in equity. The parties interested in Block Two, as grantees of Hyde, were also made defendants. The answers under oath of the defendants are waived. The prayer is for the usual decree of foreclosure, and for general relief.

TRAVERS' ANSWER.

The answer of Henry and Michael Traver, filed May 5, 1877, sets up the substance of the amended bill of Henry, referring to the same, and the allegations therein contained, as their answer to Mr. Richardson's bill. Avers that complainant Richardson had at all times full notice of the facts therein set forth, and confederated with Bogue and others to defraud defendant Henry Traver. Does not admit or deny the alleged conveyance to Earl, but leaves complainant to make proof thereof.

Answers were also filed to both bills of complaint by a part of the defendants interested as grantees of Hyde of Block Two, denying all knowledge of the alleged agreements between the Travers, and between Hyde and Michael; denying all allegations of fraud; averring that Hyde had full authority to obtain the release of Block Two, and alleging that they were respectively, purchasers in good faith for value, without notice of any equities on the part of Traver.

FURTHER STATEMENT OF FACTS.

It is established by the proofs that the Travers bought the property as a speculation, agreeing to pay Dickson $23,883, as the consideration, but the only actual payment ever made by them was the sum of $2,388, to satisfy a tax or special assessment, then a charge on the land. The mortgage to Dickson was given to secure the remainder of the purchase money. The Travers then subdivided the land into blocks and lots, and their plan and expectation was, to pay off the mortgage out of the proceeds of a part of the land, as they might be able to sell or dispose of it in parcels. This was the sole resource upon which they relied to obtain the means with which to pay for the property, and make a profit out of their speculation. They did sell parcels of Block Three; and they sold, or apparantly sold, to Charles M. Earl, and conveyed to him, thirty lots, being Lots Ten to Thirty-nine (inclusive) in Block Two, giving their warranty deeds with covenants against all incumbrances, and taking mortgages in return. The deed to Earl was dated September 2, 1872, and recorded September 12, 1872. The consideration named and acknowledged therein was fifteen thousand dollars, and it contained full covenants by the grantors, Henry and Michael Traver, including a covenant that the premises conveyed are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances, of what kind or nature soever.

Then, according to the testimony of Henry and Michael, they had a verbal understanding between themselves, that they would make a division of the property; that Henry should convey to Michael all his interest in Block Two, and in Block Three except eight lots; that Michael should convey to Henry all his interest in Block One, and the said eight lots in Block Three, and should pay off the Dickson mortgage, and procure releases for the whole subdivision. *In consummation of this verbal understanding*, Henry executed his deed to Michael, conveying, for a consideration of $100, acknowledged to have been received, Lots One to Seven, and Lots Thirty four to Forty-Three, (all inclusive,)

in Block Three, and Lots One to Nine, and Lots Forty to Forty-eight, (all inclusive,) in Block Two. This comprised all the lots in Block Two, except the thirty lots which Henry and Michael had conveyed by warranty deed to Earl. The deed from Henry to Michael was duly recorded. It contained a covenant and agreement, by the party of the first part with the party of the second part, his heirs, executors, administrators and assigns, that he had not made, done, committed, executed or suffered, any act or acts, thing or things whatsoever, whereby or by means whereof the premises described, or any part or parcel thereof, now are, or at any time hereafter, shall or may be impeached, charged, or incumbered, in any way or manner whatsoever.

Michael conveyed to Henry, Block One and the eight lots in Block Three. This appears from the statements of the pleadings; but as the deed itself was not exhibited in evidence, it does not appear whether it contained any covenant, or when it was recorded.

Soon afterwards the first maturing note to Dickson became due, and there were no means to pay it. Michael could not dispose of the securities which the Travers had taken from their grantees, on account of the paramount lien of Dickson's mortgage. They had taken a mortgage back from Earl for $9,000, on the thirty lots in Block Two, which they had conveyed to him, but could obtain no money upon it, because they could not procure releases of parcels from Dickson, although Michael made repeated attempts to do so. Michael, on his cross-examination, testifies, that when he made his verbal agreement with Henry for a division, an arrangement was then in contemplation under which it was expected that he would obtain money by disposing of securities on Blocks Two and Three, and it was intended to procure means to pay Dickson in that way. That it was contemplated he should raise money to pay Dickson by disposing of securities, which were to be made first mortgages on Blocks Two and Three. That he had made considerable effort to procure money in that way, and had applied to Dickson for releases in order to carry out the plan in contemplation before he applied to Hyde. But he could not induce Dick-

son to give any releases without first being paid. He was disappointed by reason of his failure to procure the necessary releases, and was, therefore, unable to negotiate or dispose of his securities, because they were not first liens.

Then Michael went to Hyde, and proposed that he should take hold of the business. Meantime Dickson had exercised his option to declare the whole debt due, and was proceeding to foreclose, as he was empowered to do by the terms of his deed of trust, in the summary way, by a sale on twenty days notice, for the whole amount of his mortgage debt. When Michael first applied to Hyde, he brought with him the purchase money notes, or a schedule of the notes, which the Travers had taken, secured by mortgage, from Earl, and from the parties to whom they had made the sales of the parcels of Block Three, to see if Hyde could sell them. Hyde could not negotiate these securities, because they were second liens, and of no value in the market until the prior incumbrance should be released. Michael made a second visit very soon after, saying that something must be done at once, as he had no other means of paying Dickson, and he and his brother Henry feared an immediate foreclosure. Hyde told him he had not succeeded with the securities, and doubted being able to use them until the property upon which they rested was released from the Dickson mortgage. Michael then made the proposition that Hyde should take his place in the business, and relieve him entirely, and Hyde, after visiting Dickson, made an agreement with Michael. This was also a verbal understanding or bargain, to the effect that he would take Michael's interest in the land, and pay off Dickson. Hyde testifies that it was expressly agreed and understood, that he should control the whole Sub-division, so far as related to the incumbrances; obtain releases of Blocks Two and Three from Dickson as he might desire, and could agree with Dickson; and that Block One should remain if necessary, the last to be released. He testified that Henry understood, and fully assented to this, and that without such understanding he, Hyde, would not have undertaken the business at all, as it would have been as im-

possible for him as it had been for the Travers, to accomplish it in the manner contemplated, unless he had the right to procure such releases. The Travers deny that there was any express agreement in respect to the order in which Hyde was to obtain the releases, but there is no dispute that he was authorized and expected to procure releases in parcels, and in so doing, represented both the Travers in giving such assent and sanction as was requisite on their part to the release of such parcels, so far as concerned the trustee and all third parties.

The verbal understanding between Hyde and Michael was consummated by the delivery to Hyde of two deeds, each containing full covenants of warranty, including covenants against all incumbrances; one being a conveyance, for a consideration of $16,000, acknowledged to have been received by the grantor, of the thirty lots in Block Two, from Earl, (who as above related held his title by warranty deed, acknowledging the receipt of a consideration of $15,000, with like covenant against all incumbrances, executed by Henry and Michael;) the other, a conveyance from Michael, acknowledging the receipt of a consideration of $16,000, of the rest of the lots in Block Two, and of that part of Block Three not already conveyed by deed to other parties, except the eight lots reserved by Henry. The deed from Earl to Hyde was procured by, and delivered through the hands of Michael. Hyde then conveyed those lots in Block Three, which the Travers had bargained and sold but not deeded, to the respective purchasers, which left for him, Block Two, and five lots only in Block Three. He then began to improve the property, fencing it, making side walks, planting trees, bringing on the city water, and building four two story houses thereon, in the summer of 1873, which cost about 11,000. He also purchased several lots in Block Three from the grantees of Traver, and sold lots in in that block in the fall. Then the panic occurred. He paid the interest on the Dickson mortgage and on the Richardson mortgage when due in December, 1873, but in the following winter, when one of the Dickson notes fell due, he was without means, and unable to pay it. He

succeeded in finding a purchaser named Goss, who would take nineteen of the lots in Block Two, and pay 6,000 in cash, if a clear title could be conveyed, and he then applied to Hammond and Bogue, disclosing to them the fact that the security which he had executed to Mr. Richardson in December, 1872, as before related, was a second mortgage, and subject to that of Dickson, who was again about to foreclose, and the result was, the transaction by which the Dickson mortgage was taken for the security of Mr. Richardson, as before related.

During all the time of the transactions in question, Mr. Richardson resided at his home near Boston in the State of Massachusetts. Traver resided at his home in Illinois, very near Chicago.

No proof was introduced, tending to show that any of the other parties interested as grantees of Hyde in Block Two, had any notice of the alleged agreements between Hyde and Michael, or between Michael and Henry, or that they were parties to, or had knowledge of any fraud whatever in the premises. They were purchasers for value, and evidence was adduced, showing the several conveyances, etc.

The comparative value of the three blocks was stated as follows, by the witnesses Bogue and Ayres. Bogue testified "At the time of the purchase of the Dickson incumbrance Block One was worth nearly as much as Blocks Two and Three" Ayres testified: "Block One is greatly more valuable than Block Two, and greatly more valuable than Block Three. Block Two is the least valuable of the three. Block One is worth fully a third more than Block Two, in my opinion." Snyder and Lee, whose indorsement on the Dickson notes had been procured by Hyde, at the instance of Dickson, became insolvent. Hyde also became insolvent, and took the benefit of the bankrupt act during the pendency of this suit. Hammond and Bogue also became insolvent, and went into bankruptcy, while the case was still in the Circuit Court.

Counsel for Traver took the trouble to prove that Hyde, in the bankruptcy Court, scheduled among his obligations, the notes payable to the order of Michael, and indorsed to Mr. Richardson. But it appeared that Hyde, being thoroughly befogged as to what might be the state of his legal liability upon the determination of this litigation, stated the facts to his counsel, and under his advice as a matter of prudence, included both those notes and the two outstanding Dickson notes which he had indorsed, as among his possible liabilities.

The facts herein above related, are believed to be all the facts essential or material to the determination of the case.

THE DECREE.

The cause was heard by the Circuit Court, on the pleadings and proofs, in January, 1879.

The decree was entered January 11, 1881.

The Court found the equities with Henry Traver, and dismissed the bill of Charles A. Richardson, with costs, and granted a decree under Traver's bill, discharging Block One of Traver's Sub-division from the lien of the deed of trust given to secure the Dickson notes, and adjudged that Henry Traver be forever discharged from all liability on account of the two Dickson notes held by Charles A. Richardson.

At the same term of Court, Charles A. Richardson prayed an appeal from the decree of the Circuit Court of the United States for the Northern District of Illinois, to the Supreme Court of the United States, which was allowed by the Court, upon his filing bond with security, which was duly filed, in accordance with the order.

ASSIGNMENT OF ERRORS.

1. The Circuit Court erred in rendering the decree dismissing the bill of Charles A. Richardson.

2. The Court erred in rendering the decree under the bill of Henry Traver, discharging Block One of Traver's Sub-division from the lien of the Dickson deed of trust, and in decreeing the discharge of Henry Traver from all liability on account of the two Dickson notes held by Charles A. Richardson.

3. The Court erred in not rendering a decree dismissing the bill of Henry Traver, and in not decreeing a sale and foreclosure, in accordance with the prayer of the bill of Charles A. Richardson.

BRIEF.

I.

The parol agreements were contradictory to the acknowledgments, and in opposition to the plain import of the covenants contained in the deeds. If by possibility they could be held as of force between the original parties, they were ineffective and nugatory as to third parties.

In *Howes* v. *Barker*, 3 Johns. R. 509, it was held that the contract between the parties, having been executed and consummated by the deed, the agreement became null and of no further effect; that the deed must be considered as the execution of the whole contract, and it must be presumed that the consideration mentioned in the deed was that finally agreed upon between the parties.

In *Wilson* v. *Deen*, 74 N. Y., 534, it was held that when the terms of a lease are in writing, the rights and duties of the parties depend upon the terms or legal intendment of the lease itself; or as otherwise expressed, it is conclusively presumed that the whole engagement of the parties is embraced in the writing.

That the rule is the same in equity as at common law, and that a written contract can not be controlled by evidence that it was executed on the faith of a contemporaneous or preceding oral stipulation not embraced in it. The very purpose of the rule which excludes such evidence is to avoid its uncertainty, and equity will not set aside that important and well settled rule for the purpose of relieving a party against a risk which upon his own showing he has voluntarily incurred.

In *Howe* v. *Walker*, 4 Gray, 318, it was held that an oral promise to discharge an incumbrance, not created by himself, made by a grantor to a grantee, at the same time and for the same consideration as a deed containing covenants of special warranty, will not support an action; that the parol evidence, if allowed, would enlarge the covenant contained in the deed; that under the guise of proving by parol the

consideration of a written contract, you can not add to or take from the other provisions of the written instrument, as this would practically dispense with the statute of frauds, and with that sound rule of the common law which finds in the written contract the exclusive and conclusive evidence of the intent and agreement of the parties.

In *Dana* v. *Boyd*, 2 J. J. Marsh. 588, it was held that parol evidence is inadmissible to contradict or qualify a covenant in a written instrument.

In *Holly* v. *Younge*, 27 Ala., 203, it was held that the legal effect of a covenant cannot be varied by a parol contemporaneous agreement on the part of the vendee to pay an outstanding incumbrance.

In *Wells* v. *Groesbeck*, 22 Texas, 429, where land was sold and the deed contained a covenant of warranty, parol evidence was held inadmissible to show an agreement that the vendee should take such title as the vendor had.

In *Machir* v. *McDowell*, 4 Bibb., 473, it was held that parol proof of an agreement by the vendor of land at the sale, to extinguish an intervening claim, would not be allowed to vary the terms of a written contract: and that, as the statute of frauds requires that every agreement respecting lands should be in writing, it plainly follows that the written agreement can not be added to or varied by such evidence.

In *McClosky* v. *McCormick*, 37 Ill., 72, the Court said Cases have held that the receipt in a deed of the consideration money may be shown to be incorrect in amount, or that it was not paid: but evidence is not receivable to invalidate the legal effect of the instrument.

In *Andrews* v. *Mann*, 92 Ill., 42, it was said that it is the settled doctrine of the Court, that when an instrument is partly a receipt and partly a contract, the part constituting the agreement of the parties can not be contradicted or varied by parol.

In the case of *Sugdam* v. *Jones*, 10 Wend., 180, where land subject to a mortgage was conveyed by deed with covenants of warranty, and it was agreed verbally at the time of the

conveyance, that the grantee should assume the payment of the mortgage, and pay to the grantor only the difference between the amount thereof and the sum agreed on as the consideration of the conveyance, and that the covenants should not be considered to extend to the mortgage, it was held in an action on the covenants, brought by the assignee of the grantee, that the covenants passed to the assignee with the land, and could not be affected by equities, if any existed, between the original parties, any more than the legal title to the land itself. The Court said that if the action had been brought by the grantee himself, instead of his assignee, the principle that a written instrument cannot be varied essentially by parol, would seem to exclude the defence, as the covenant in the deed embraced in its terms the mortgage in question. That the case must be brought within the principle of fraud, and the assignee must be affected with it, before such a defence could be available. That to allow a secret agreement, in opposition to the plain import of a covenant running with the land, to control and annul it in the hands of a *bona fide* assignee, would be a fraud upon such assignee, which the law will not tolerate.

In *Selchow* v. *Stymus*, 26 Hun (N. Y.,) 145, the plaintiff held a mortgage executed by Smith, who had given a preceding mortgage on the same premises. Smith conveyed the premises to Griffith, who, by the terms of his deed, assumed the payment of both mortgages. Griffith afterwards entered into an agreement to convey the same property to the defendant, and he did so convey it, subject to the amount unpaid on the first mortgage, which by the terms of the deed, the defendant was made to assume. But no such obligation was imposed upon him for the payment of the plaintiff's mortgage. To maintain the action, however, it was proposed to be shown that the defendant had agreed to assume and pay her mortgage, either at the time when the formal contract for the sale of the property was made with him, or afterwards, when a further statement was signed to the effect that the property was taken subject to the second mortgage.

The Court, at General Term, said it appeared that the additional agreement was made, if at all, before the formal agreement for the conveyance of the property was made. For that reason the evidence which was offered to prove that defendant had assumed the payment of the plaintiff's mortgage was rejected by the Court, and that ruling is relied upon as erroneous, because the plaintiff herself was not a party to the written agreement. The principle that a stranger to a written instrument may, when his rights and interests require that to be done, prove by oral evidence the agreement to have been otherwise than as stated in the writing, can afford the plaintiff no possible assistance, for in the claim made by her, she is obliged to derive it through Griffith, who made the written contract with the defendant, and consequently she stands in privity with him.

By the agreement which Griffith entered into with the defendant, the title was to be taken subject only to the first mortgage existing upon the land. It was in express terms agreed that it was to be taken subject only to the mortgage mentioned in the instrument, and otherwise it was to be free from any and all liens and incumbrances. The proof which was offered to support the plaintiff's case was in direct conflict with these stipulations, and as she claimed nothing beyond the rights she might be entitled to derive under the agreement, as it was in fact made by Griffith, she could not prove that these stipulations did not truly express the agreement he intended to enter into. Its terms were conclusive upon Griffith, and as she stood in privity with him, they were equally so as to herself.

In *Curtis* v. *Root*, 28 Ill., 375, the Court said: Admitting for the present, that as between the parties to a deed, and even as to third persons with notice, it is competent to show by parol that the consideration and date of a deed, as expressed on its face, are different from the true consideration and date, there should be clear proof that such third person had knowledge of the extraneous facts thus proved by parol and not appearing upon the face of the deed, before he can be affected by them. It is claimed that this mortgage was

given to secure the purchase money of the land, and that it was executed at the same time the deed was executed. On its face the mortgage shows that it was given to indemnify the mortgagee against loss which he might incur by reason of his having executed certain bonds for the security of the mortgagor.

Prima facie, at least, the object of this mortgage was not to secure the purchase money of the land, nor did it appear to have been executed at the same time with the deed. It was the duty of purchasers to examine the records, and they are chargeable with notice of all the facts of which the mortgage could inform them. But the purchaser was not bound to inquire whether the mortgage did not express on its face a falsehood. He was not bound to suspect that the mortgage was a trap to mislead him. If he was to be charged with any extraneous facts, qualifying or contradicting the face of the mortgage, it should only be done upon clear and satisfactory proof that he had actual knowledge of such facts.

In *Rogers* v. *Wiley*, 14 Ill., 66, and *Newhall v. Pierce*, 5 Pick 450, it is held, that in order to affect a third party by facts extraneous to a deed, proof of his knowledge of such facts must be clear and positive.

In *Work* v. *Brayton*, 5 Ind., 396, and *Waters' Appeal*, 35 Penn. *St.*, 523, it is held that a grantor who has put a deed upon record, in which there is a recital that the consideration was paid, or acknowledging the receipt of it, will be estopped from showing that it was not paid, as against third persons. That subequent purchasers are not bound to go beyond the recorded declarations of the parties, and inquire into their actual relations.

II.

In the state of Illinois, the covenant against incumbrances runs with the land.

In *Richard* v. *Bent*, 59 Ill., 38, the question was, whether an action of covenant lies by a remote grantee against a remote grantor, upon a covenant against incumbrances in the deed of the latter. In the opinion of the court, Mr. Justice SHELDON, after reviewing the English and American decisions, says: (p. 45.) In the state of the authorities, not feeling embarrassed by any former decisions of our own upon the point, we feel free to adopt the rule which we regard as the more reasonable and just. That is obviously the one which sustains this action in the present form for breach of the covenant against incumbrances. We hold that the right of action for the breach of the covenant passed to and vested in the assignee.

In *Coffman* v. *Scoville*, 86 Ill., 300, it was held that a vendor of land, who conveys by deed with covenants against incumbrances, and takes the notes of the purchaser secured by trust deed on the property for the unpaid purchase money, is bound to protect the purchaser against any incumbrances that were on the land when he conveyed, before he can properly demand payment of the notes given for the purchase money.

In *Hume* v. *Long*, 6 Monroe 116, and *Grant* v. *Ludlow's Admr.*, 8 Ohio St., 24, it is held that defendant to a suit in equity may set up claims purely legal in his answer, provided they are connected with, or arise out of the matter set up in the bill.

In *Riddle* v. *Mandeville*, 5 Cranch 322, and *Grant* v. *Ludlow's Admr.*, supra, it is held that courts of equity will make that party immediately liable who is ultimately liable at law.

III.

The transaction of Hammond and Bogue, in taking up the two Dickson notes in behalf of Mr. Richardson, was a purchase of the notes.

In *Dodge* v. *Freedmen's Savings and Trust Company*, 93 U. S., 379, it is held by this Court as follows:

In cases like that before us, where the intention to continue the existence of the note and not to cancel it by payment is made evident when the money is paid to the collecting agent appointed to receive it, and the owner of the note receives the amount due to him, the authorities sustain the transaction as a purchase. The opinion cites among others, the following cases: In the *Pacific Bank* v. *Mitchell*, 9 Met., 297, it was held that when the holder of a bill of exchange, accepted for the accommodation of the drawer, sends it to the bank for collection, and the bank, when the bill comes to maturity, passes the amount thereof to the creditor of the holder, this is not such a payment as discharges the acceptor, but the bank succeeds to the rights of the holder; and may maintain an action on the bill against the acceptor. The plaintiffs, it was held, succeeded to the rights of the bank, and became *bona fide* holders of the bill. In *Burr* v. *Smith*, 21 Barb. 262, it was held that a stranger may advance the money, and hold the note, if such is the clear intention of the parties at the time of the transaction. In *Harbeck* v. *Vanderbilt*, 20 N. Y., 395, it was held that when the amount due upon a judgment is paid wholly or in part by one who is not a party nor bound by it, the judgment is extinguished or not, according to the intention of the party paying.

The transfer of the notes carried the security with them. *Pardee* v. *Lindsley*, 31 Ill., 184.

IV.

Mr. Richardson is entitled to hold the Dickson security by way of subrogation.

The right of subrogation applies in general, in favor of any person who, not being under obligation to pay the mortgage debt, does so for the benefit of the debtor; as by furnishing money to the mortgagor to take up the mortgage, under an agreement to execute a new one, 1 *Jones on Mort.* § 874, *Carter* v. *Taylor*, 3 Head, 30, *Roddy's Appeal* 72 Penn. St., 98, *Moore* v. *Berkshire*, 52 Ind. 149, *Davis* v. *Winn*, 2 Allen, 111, *Matteson* v. *Thomas*, 41 Ill., 110, *Morgan* v. *Hammett*, 23 Wis., 30, *White* v. *Knapp*, 8 Paige Ch., 175.

It is not necessary that a junior mortgagee should be interested in the whole of the premises covered by the senior incumbrance. *Bogert* v. *Coburn*, 27 Barb., 230; Exparte *Welland*, 5 Wend., 94; *Lyman* v. *Little*, 15 Vermont, 576.

Where a mortgagee, having a lien on two funds, satisfies it out of one which is subject to a junior mortgage, the junior mortgagee is subrogated to the other fund. *Hunt* v. *Townsend*, 4 Sanf. Ch., 510.

In *Suelling* v. *McIntyre*, 6 Abbott's N. C. (N. Y.) 469, it appeared that when the money was advanced upon the mortgages sought to be foreclosed, there were prior mortgages on the premises, executed by Charles McIntyre before his marriage. The after acquired dower rights of his wife, Catharine, were subordinate to the rights of the holders of these mortgages. The prior mortgages were in fact, unsatisfied of record when the moneys were advanced on the mortgages in suit, although it was understood that such moneys should be used, and they were in fact applied to the payment of such prior mortgages, and they were satisfied of record. Catharine McIntyre was not then of age, but the fact of her infancy was not known to the persons taking the second mortgages. They paid their money and caused the first mortgages to be satisfied, in ignorance of that fact. The mortgages were executed by McIntyre and his wife in 1871, and the action of foreclosure was brought in 1878. To this action the wife set up her infancy at the time she executed the mortgages and claimed that as to her and her dower rights, they were void. The Court said: Under the circumstances it is equitable and just that the prior mortgages, which were satisfied with the moneys raised on those executed by McIntyre and his wife in 1871, should be revived. The doctrine of equitable subrogation, at first applied in behalf of those who were bound by the original security with the principal debtor has been greatly extended, and the principle, modified to meet the circumstances of cases as they have arisen, has been applied in favor of volunteers intervening subsequent to the original obligation, and as between different classes of sureties, and in marshalling of assets, and prescribing the

order in which property and funds shall be subjected to the discharge of different classes of creditors, so as to do substantial justice and equity in each case, (citing *Barnes v. Mott*, 64 N. Y 397.) It has been said in some of these cases, that mere volunteers cannot invoke the doctrine of subrogation, so as to keep alive or restore a debt which they have paid. But I cannot say that as to McIntyre and wife, the persons who advanced the moneys to pay the first mortgages were intruders. The loans were solicited to pay these mortgages, and under an understanding, express or implied, that they would be entitled to security of as high a grade as those retired. The mortgagees had the right to insist that those mortgages should be paid or assigned to them, and that for such purpose the moneys which were advanced should be applied. To this extent they were neither strangers nor volunteers.

In *Gilbert* v. *Gilbert*, 39 Iowa, 657, it was held that the execution of a mortgage to raise money with which to discharge a prior incumbrance, will entitle the mortgagee, upon the application to that object of the money thus raised, to be subrogated to the rights of the first incumbrancer. And where a trustee, clothed with power to incumber an estate by mortgage, for the purpose of raising money to discharge a debt against it, executed a mortgage in his individual capacity, which failed to bind the estate, but the money raised upon it was applied to extinguish an incumbrance then resting upon the estate, it was held that the mortgagee in the defective mortgage was subrogated to the rights of the prior incumbrancer.

In *Tradesman's Building Association* v. *Thompson*, 32 N. J. Eq., 133, the complainants had taken a mortgage for $2,200 on the land of Thompson, with the understanding that it was to be, and in fact was, the first incumbrance. At the time this loan was negotiated, there were two mortgages on the property, the first, known as the Wallace mortgage, for $1,500 and interest, the other known as the Franklin mortgage for $500 and interest. The Franklin mortgage had been previously assigned to another party, but the assign-

ment was unknown to the complainants, and when they agreed to advance the $2,200, it was on the understanding that in order to make their mortgage the first incumbrance, the Wallace mortgage should be paid off out of the money lent, and it was paid accordingly, and was cancelled. The Franklin mortgage was also cancelled, in pursuance of an agreement which was testified to have been made by Franklin, that it should be extinguished, and a new one for the same amount, to be subordinate to the complainants' mortgage, taken in its stead. Franklin, however, denied that he ever made such an agreement, and the cancellation of that mortgage was considered by the Court to have been unauthorized.

Under these circumstances the Court held that the complainants were entitled to be subrogated to the Wallace mortgage; that they were in no sense volunteers, they having paid off the Wallace mortgage in the confidence that they would have the same security for their money which the holder of that mortgage had; that is, a first incumbrance on the property. That if a party who has agreed to advance the money for that purpose, employs it in paying the debt and discharging the incumbrance on land given for its security, he is not to be regarded as a volunteer. The real question in all such cases is, whether the payment made by the stranger was a loan to the debtor through a mere desire to aid him, or whether it was made with the expectation of being substituted in the place of the creditor. In the former case he is not entitled to subrogation; in the latter case he is.

In the case of *Caudle* v. *Murphy*, 89 Illinois, 356, it was held that where a third person paid a debt secured by mortgage, at the request of the mortgagor, but took the note and mortgage as a security for the money so advanced, he was in equity entitled to be subrogated to the rights of the original creditor, and to have the property sold under the power in the mortgage or trust deed, in the same manner the mortgagee might have done in default of payment to him; and that in order to sustain the allegation as against a purchaser at such sale, that the mortgage was extinguished by such payment, the

proof must be clear that the payment was made as an extinguishment of the mortgage debt; that it ought to exclude, distinctly and definitely, every reasonable probability that the note and mortgage were taken by the person making the payment, as security for the sum advanced.

ARGUMENT.

THE ALLEGATIONS OF TRAVER.

The alleged equities of Henry Traver, as set forth in his bill and in his answer to Mr. Richardson's bill of foreclosure, are founded on the following statements and charges:

That the verbal agreement between Michael and Hyde, preliminary to the execution of the deeds to Hyde, was a valid contract, and that Hyde was thereby bound to pay off the Dickson mortgage as the consideration for the conveyances to him, and to procure a release of Block One from that incumbrance, before procuring the release of Block Two.

That Bogue had full knowledge of that contract and obligation, and with such knowledge entered into a combination with Hyde to defraud Henry Traver, and took the Dickson notes, and fraudulently procured the release of Block Two, so as to charge Block One with the burden of the Dickson mortgage. That Charles A. Richardson is chargeable with notice of the fraudulent acts of Bogue.

That when Bogue took up the Dickson notes, they had been properly indorsed by Dickson, so that the legal title passed to Bogue, and that Richardson is estopped to deny that Bogue, at the time the release was executed, was the owner of the notes.

That Richardson is combining with Bogue to cheat and defraud Traver.

Traver's complaint, and his defence to Mr. Richardson's bill, are based on the assumed dereliction of Hyde, in the performance of his supposed obligations under his verbal agreement with Michael, and the alleged notice to Hammond and Bogue, and through them to Mr. Richardson, of those obligations; and the charge that the parties last named were in a combination with Hyde, for the purpose of defrauding Traver.

POSITION OF CHARLES A. RICHARDSON.

It is insisted on the part of Mr. Richardson, that the verbal agreements are nugatory, as well under the statute of frauds, as because they were in conflict with and repugnant to the covenants and the acknowledgments in the deeds by which they were consummated, and in which they were merged. If, however, the parol agreements could be held as of force between the original parties, they can not in any way affect or concern Mr. Richardson, as the proofs fail to establish the allegation that either he or Hammond and Bogue had notice of Hyde's verbal agreement with Michael. The facts asserted in the deeds and the covenants therein, justified Hammond and Bogue and all third parties becoming interested in the premises, in believing that all of the consideration for the conveyances to Hyde, had been paid directly to the grantors when the conveyances were made, except the sum of $10,000 loaned by Mr. Richardson, which was paid to Dickson.

That if effect could be given to the parol agreements, as contracts, made with the knowledge of all the parties, the proofs do not show such dereliction on the part of Hyde as would afford grounds of complaint to Traver against Richardson, or any good defence to Mr. Richardson's bill. That whatever ground of complaint Traver may have in consequence of the acts of Hyde, is against him, and not against Mr. Richardson.

That the proofs fail to show any combination or confederacy on the part of Hammond and Bogue, or Mr. Richardson with Hyde, for the purpose of defrauding Traver, but do disclose a combination between the Travers and Hyde, the intent of which was to defraud Mr. Richardson.

That the taking of the two Dickson notes by Hammond and Bogue in behalf of Mr. Richardson, was a purchase of the notes: and aside from this, Mr. Richardson is entitled to hold the Dickson security by subrogation.

THE PAROL AGREEMENTS.

It is alleged in Traver's bill, and shown by the testimony of Hyde and the Travers, that the parol agreement made between Michael and Henry, and that made by Hyde with Michael, were both consummated by the respective deeds. The deed made by Henry to Michael in consummation of their agreement, expressed and acknowledged the receipt of a consideration of $100, and contained Henry's covenant against all acts done or suffered by him, whereby the premises described were or might be charged or incumbered. If the real consideration of this deed was the agreement of Michael to pay the Dickson mortgage, as Traver has attempted to show by parol, then it was a consideration different from that expressed in the deed, and contradictory to the plain import of the covenant, which in its terms embraced that mortgage.

The agreement between Hyde and Michael was consummated by the execution and delivery of two deeds to Hyde, both containing full covenants of warranty, and against all incumbrances, one of which was executed by Michael, and acknowledged the receipt of a consideration of $16,000; the other, executed by Earl, was procured by the instrumentality of Michael, and delivered to Hyde through his hands, and expressed and acknowledged the receipt of a consideration of $16,000. The contradiction between the verbal agreement of Hyde, alleged to have been the true consideration for these deeds, and the expressions and covenants in the deeds themselves, is equally apparent: and it is to be considered also, that the premises described in the deed made by Earl, had been previously conveyed to him by deed from Henry and Michael, with full covenants of warranty and against incumbrances, and acknowledging the receipt in full of a consideration of $15,000.

Traver now seeks to maintain that force must be given the preliminary verbal understandings, to override the acknowledgments and extinguish the effect of the covenants in these deeds, not merely as against the grantees named

therein, but as against Mr. Richardson, whose interests were subsequently acquired.

In the State of Illinois, where the land in question is situated and where all the agreements and deeds were made, the covenant against incumbrances runs with the land. (*Richard v. Bent*, 59 Ill., 38.) The grantees of Hyde became the covenantees of Henry, as well as of Hyde and Michael, against the Dickson mortgage; and a part of the security held by Mr. Richardson under the deeds of trust first received by him as security for his loan, was the covenant of Henry Traver, by which Traver was bound to protect him against the Dickson incumbrance.

As against Mr. Richardson, Henry Traver is clearly estopped from showing that the consideration expressed and acknowledged in the deeds, was not the true consideration for which the conveyances were made. The proof fails to establish that Richardson, or Hammond and Bogue had notice of Hyde's verbal agreement. All the testimony tending to make such proof, was given by Michael, in detailing a conversation with Mr. Bogue. He testifies: "Then I "asked Mr. Bogue if he was aware that all of Block One "belonged to my brother and he said he was, as Mr. Hyde "had frequently told him the agreement that I had with my "brother: that was the conversation that I had alone with "Mr. Bogue."

Michael does not pretend to fix any time when Mr. Bogue received this information, and on his cross-examination Michael admits that on the first interview—on which occasion he was not "alone with Mr. Bogue" but the three were present—when Henry first complained that the release of Block Two threw the burden of the remainder of the security on Block One, Mr. Bogue answered that he supposed the entire Subdivision belonged to Mr. Hyde: that he had so understood it: and this is confirmed by the testimony of Henry. Hammond and Bogue both testify that they had no knowledge of the alleged verbal agreements, and Mr. Bogue further testifies: "After the conversation with Henry, as to "his owning Block One, I spoke to Mr. Hyde as to the

"ownership of that block; as to whom the title was in; and "also asked him in relation to a contract. He told me he "held a contract with the Travers. I did not inquire "as to the points of the contract. I never saw any "contract. I think I told Michael afterwards, that Mr. "Hyde told me there was a contract. I never told "Michael in substance, that I had known at any time previous "to the interview mentioned with Henry, that Block One "belonged to Henry, or that Mr. Hyde had frequently told "me about an agreement which Michael had with his brother."

It is evident that Hammond and Bogue had no actual notice of any existing relations between Hyde and the Travers inconsistent with the covenants and acknowledgments contained in the deeds. There is no doubt they understood that Hyde was the owner of the equity of redemption of the whole Subdivision. They had notice, in January 1875, that he had exercised one of the usual acts of such ownership, in procuring, two years before, the release of Block Three from the lien of the Dickson mortgage, which had previously covered the whole Subdivision, and they had never heard of any objection or question raised by Traver, respecting his right or authority to obtain the release. Hyde was an indorser on the Dickson notes, and made some payment thereon, in order to reduce the amount to 10,000. But the indorsement showed a liability to Dickson, and not an obligation to Traver. By that indorsement, Hyde had become responsible as a guarantor of the payment of the notes. His liability became absolute upon the default of Traver, and the payment made by him was in accordance with his obligation as guarantor, and such as any guarantor might have made, who would be entitled to recourse upon his principal. As a party to the notes, whose responsibility differed but slightly from that of a maker, he was interested on his own account, aside from the interests of the speculation in which he and Traver were both involved, in procuring extension of payment. It does not appear that the question of Hyde's relations with the Travers or either of them, was ever mentioned or alluded to, between Hammond and Bogue and Hyde, until

after Henry Traver had informed Mr. Bogue of his ownership of Block One.

If there was constructive notice by the records in the registry of deeds of Cook County, of Henry Traver's ownership of the equity of redemption of Block One, there was also notice by the same record of the facts set forth in the several deeds, and that Traver was bound by his covenants to remove the Dickson lien from Block Two. And when that lien should be so removed, in accordance with the obligation of those covenants, it would rest on Block One, where it now rests.

All assumed obligation of Hyde to Traver is founded upon his oral agreement with Michael to pay off the Dickson mortgage, which is claimed to be the only consideration for the conveyances to him. But Michael, the payee of the notes first taken by Richardson, allowed those notes to go out, with his endorsement, accompanied by the deeds of trust executed by Hyde to Hammond as trustee, purporting to secure "the unpaid part of the purchase price of the "premises." The purchase price of the premises, as stated in his deed to Hyde, was $16,000, and if the $10,000 secured by the trust deeds was the unpaid part, as therein asserted, then the remainder of the consideration, amounting to $6,000, had been already paid.

Instead of taking any means to exhibit or make known what they claim to have been the true state of affairs, they took pains to conceal it, and Mr. Richardson was expressly notified and informed by these deeds, that the balance of the consideration for the conveyance from Michael to Hyde had been fully paid. As the transaction was made to appear, a part, but not all of the purchase price of that portion of the land conveyed directly from Michael to Hyde, was applied in payment of an installment upon Dickson's mortgage. The money so applied was raised by disposing of the notes to Mr. Richardson, on which Hyde was liable as maker and Michael as indorser. There was nothing to show that any part of the purchase price of that part of the land conveyed by Earl to Hyde, had been or was to be applied in

any such manner, nor was any proof or inference furnished that Hyde was under obligation to the Travers or either of them, to pay the Dickson notes then outstanding, but the contrary.

What appeared was, that a part of the consideration named in one of the deeds of conveyance to Hyde went to Dickson, and that the remainder had been paid in full to Michael, and that all the consideration named in the other deed had been paid in full to Earl. If it was understood that Hyde should pay off Dickson, as the consideration for the property deeded to him, why did Michael receive $6,000, the balance in full of the consideration expressed in his deed to Hyde, and why was the consideration named in the deed from Earl paid in full to him? Yet this is what was shown by the deeds, and the presumption arising from these facts was, that in case Hyde should himself afterwards pay and take up the outstanding Dickson notes, he would be entitled to hold them with the security, to indemnify himself as a guarantor against the Travers.

AUTHORITY OF HYDE AS TRAVERS' REPRESENTATIVE.

If the preliminary verbal agreements were to be treated as effective contracts, made with the knowledge of all the parties, it is not apparent that Hyde went beyond the scope of his authority as the representative and agent of Henry Traver, or that there was in his methods, any departure in a direction towards fraud upon third parties, from the plan which the Travers had themselves attempted to pursue. It is not disputed that Hyde was authorized and required to procure releases. The Travers say there was no understanding as to the order in which they should be obtained. If that is true, then it was left to the discretion of Hyde. He might have exercised this discretion improvidently or recklessly, and without making such application of purchase money received as consideration for conveyances of Blocks Two or Three, as his moral or equitable obligations to Traver required, but the releases would be valid and effectual in the

interests of third parties, as against Traver. So far as the act or sanction of Traver was necessary in respect to releases, he was concluded by the acts of Hyde. The testimony of Hyde is, that it was distinctly understood that Block One should remain if necessary, the last to be released. It is certain that Hyde's authority was not limited to the obtaining of releases in the order beginning with Block One. The acts of Michael, in seeking releases from Dickson, of parcels of Blocks Two and Three, in order to make the securities which the Travers had taken from Earl and others first mortgages and marketable, must be taken to be their construction of their agreement, as authorizing Michael to obtain releases in a different order, and when Hyde took the place of Michael he succeeded to the same authority. It was in pursuance of this authority that he contracted with Mr. Richardson, when he obtained the loan from him, to give him the security of a first mortgage on Block Two. Had this been done, can there be any dispute that Mr. Richardson would have had a valid first lien on that block, as against all claims of Traver? In fraud of this contract, but in pursuance of the same authority, and without any other authority whatever on the part of Traver, Hyde procured the release of Block Three instead of Block Two, and Traver, well knowing the fact, manifested no disapproval. He made no objection that the release was taken out of its proper order, nor did he then or at any time, attempt to place any limit upon Hyde's authority, or interfere to control his discretion, although it would have been very easy for him to do it, by simply notifying the trustee, who was near at hand and readily accessible. He tacitly approved the act and agency of Hyde. There can be no doubt that Hyde's authority was sufficient to empower him to procure the release of Block Two from Dickson's lien, so as to give Mr. Richardson a first mortgage, according to his agreement, and this agreement, on the faith of which Mr. Richardson's loan was made, created an equity against Traver. In the obtaining of both the releases which were procured from Dickson or his trustee, Hyde was not only acting within the scope of this authority from Traver, but he was follow-

ing precisely the plan which the Travers had conceived, which Michael had tried unsuccessfully to operate upon, and which they finally turned over to Hyde for execution. The plan was contrived for the purpose of trying to make twenty-three hundred dollars equal to twenty-three thousand, measured by the profits accruing from the investment. If it finally involved Henry in trouble, that was no more than might have been expected from the first.

There is great doubt, to say the least, whether Hyde, at the time when the agreement was made by which the Dickson security was taken for ~~them~~ Mr. Richardson, could have done anything better, and the situation was no more desperate than they all had reason to anticipate in view of the hazard attending the methods pursued.

It is far from being established that Hyde exercised his discretion improvidently, in obtaining the release of Block Two. It is not clear that he could have otherwise avoided a summary foreclosure, involving the immediate collapse of the whole speculation; and although it left a portion, being less than one-half of the original Dickson mortgage, resting solely on Block One, yet the immediate danger of loss to Traver was not in fact increased, but diminished. Traver, it is true, was left exposed to risk, but not to so much as he was running before, with a foreclosure impending. Could he expect to participate in such a speculation as he was carrying on by the agency of Hyde, without risk?

FRAUDULENT COMBINATIONS.

Now, what is shown by the evidence in respect to fraudulent combinations and confederacies? When Hyde borrowed the $10,000 from Mr. Richardson, the fact was well known to the Travers, and Michael was the payee and indorser of the notes which Mr. Richardson received. They also knew where the money went; that it passed directly to Dickson, and stopped the impending foreclosure. The deeds of trust made to Hammond as trustee, to secure Richardson, contained full covenants, and purported on their face to be first mortgage liens. The Travers knew they were not first

mortgages; they knew that when Mr. Richardson's money was paid over to Mr. Dickson, the release obtained was of Block Three, instead of Block Two, on which as a first security, Mr. Richardson had made his loan, and by which release Henry obtained a clear title to his eight lots in Block Three, then of value equal to the entire amount he had actually invested. They must have known that this operated as a fraud upon Mr. Richardson, or the holder of this security. They had good reason and good opportunity to know it. They were well aware, from their own very recent experience, that no such loan could be effected on the security of a second mortgage. The evidence points, not to Hammond and Bogue, but to the Travers as the confederates of Hyde, in a fraudulent combination to deprive Mr. Richardson of his promised security. Nor can the Travers be heard to allege that they were initiated or drawn into fraudulent practices by the suggestions of Hyde. It is certain that they were abundantly capable of originating a fraudulent scheme without taking lessons. The evidence discloses that when Henry and Michael made their deed to Earl, conveying the thirty lots, they inserted therein the pretended consideration of fifteen thousand dollars, and took a mortgage back from Earl for $9,000. There was, in fact, no other or greater consideration than the mortgage for $9,000, but they inserted in the deed the fictitious consideration of $15,000, with the intent to deceive the purchaser of the security, on whom they intended to impose it as a purchase money mortgage, into the belief that it had been taken by them to secure a part only of the consideration for which they had sold the land to Earl. Michael himself testifies that the deed to Earl was made for the purpose of getting $9,000 in notes from Earl, secured by a deed of trust, that he might negotiate them, and that there was no consideration received from Earl, except the notes given by him upon the property for $9,000. When this scheme failed on account of Michael's inability to procure releases of Block Two from Dickson, the Earl mortgage of $9,000 was formally released of record, and the notes made by Earl returned to him; and Earl, at the instance of the Travers, made a deed of the

thirty lots to Hyde. The whole affair was a combination to defraud. Earl in taking the deed and giving the mortgage, was simply acting as a decoy for the Travers. The element of success, first in procuring a release from Dickson, then in securing a victim on whom to impose the manufactured security, was only wanting, to give the fraud full proportions.

If they could originate a fraudulent combination with Earl, they could continue the fraudulent intent in combination with Hyde; and when in the deeds of trust first taken by Mr. Richardson, it was expressly declared that they were given to secure the unpaid part of the purchase price of the premises, which had been conveyed to Hyde by Michael by deed expressing a consideration of $16,000, the false inference was designedly given, that $6,000 of the consideration had been actually paid.

They were parties to a scheme of speculation, designed to be carried on through methods of their own devising, which seem to have necessarily involved the perpetration of frauds upon any third parties with whom they should come in contact, and no protest or complaint was heard from either of them, until Henry Traver came to the conclusion that Hyde, his agent, and the only active manager of the scheme, had thrust an unfair proportion of the risk upon his shoulders.

EQUITIES OF CHARLES A. RICHARDSON.

From the time when Mr. Richardson's loan was made, in December, 1872, nothing occurred to notify him that anything was wrong, or to disturb the confidence reposed in his security as a first mortgage, until after the expiration of two years. At the end of that period, the parties to the speculation in the land became again involved in trouble. One of the two remaining Dickson notes had matured, and Dickson, again exercising his option under the provisions of his deed of trust to declare the entire debt due, was proceeding to a summary foreclosure. Driven by the necessity of obtaining some kind of relief, Hyde went to Hammond and Bogue and disclosed the fact that the release executed when the loan was made, was for Block Three instead of Block

Two, and consequently Mr. Richardson's security was but a second mortgage instead of a first mortgage which he had stipulated for, and that it was in immediate danger of extinguishment by Dickson's intended foreclosure.

What was then the position, and what were the equities of Charles A. Richardson?

As a mere junior incumbrancer of Block Two, without respect to any covenants, he would have the right, in case of a foreclosure of Dickson's mortgage, to require Dickson to exhaust Block One before seeking satisfaction out of any part of Block Two; or if Dickson should satisfy his mortgage by the sale of Block Two alone, he would be subrogated to the security of Dickson on Block One. He would also have the right to pay Dickson the amount due to him, and be subrogated generally to Dickson's security on both blocks. But he was something more than a mere junior incumbrancer. In equity he was entitled to be deemed a first incumbrancer, as against all these parties except Dickson. The security which he had received was not what it had been contracted and taken for, but an imposition, practiced by Hyde acting in the interests of himself and Henry Traver. Mr. Richardson had the same rights as though he had advanced the money paid to Dickson, on the promise of a security of equal grade, and had then received no security at all.

As to Mr. Richardson, the Travers and Hyde were all equally obligated by the covenants in their deeds, to pay the Dickson mortgage. He was under no obligation to look to one to the exclusion of another, but had the right to look to either, and courts of equity will consider that party immediately liable who is ultimately liable at law. (*Riddle* v. *Mandeville*, 5 Cranch, 322.)

Had Hyde procured the release of Block Two, in accordance with the condition upon which Mr. Richardson made his loan, the Dickson lien would have been removed from that block, and this is what the covenants of Henry and Michael and Hyde required should be done. It was only

by the contemporaneous release of Block Two, that the obligations imposed by their covenants could be complied with. They were not complied with but disregarded, and Mr. Richardson was equitably entitled, without making any further payment, to be subrogated to the Dickson security, to the extent of the sum of $10,000, which he had advanced expressly to be used in the payment of an installment on Dickson's mortgage, on the faith of a first mortgage security to himself, which he never had. Mr. Richardson would then hold an interest of $10,000 in the Dickson security, and Mr. Dickson would hold his interest therein, amounting to a similar sum, to which the interest of Mr. Richardson would be subordinate. (*Penn* v. *Atlantic & G. W. R. R. Co.* Am. Law Reg. 1872, Vol. 11, p. 83.)

As against the Travers and Hyde, Mr. Richardson was on an equality with Mr. Dickson, and had an equal right to look to them or to the property for his satisfaction.

This was the situation at the time the Dickson security was taken up by Hammond and Bogue.

Hyde had now found a purchaser for nineteen of the lots in Block Two, but it was necessary to give this purchaser, Goss, a clear title. Precisely the same exigency presented itself which Michael had encountered when he endeavored to dispose of the Earl mortgage. Hyde did just what Michael then attempted, but failed to accomplish.

Goss received a warranty deed from Hyde, and paid over the money, on the faith of being invested with a title absolutely free and clear of all encumbrances. This was not only the covenant of Hyde, in accordance with his engagement with Goss, but the money was paid by Goss and received by Hammond and Bogue, in consequence of their undertaking to purchase the Dickson notes in behalf of Mr. Richardson, and consent to the contemporaneous release of the lots purchased by Goss from all the incumbrances. Furthermore, Goss as grantee became, like the other grantees of Hyde, who are present holders of Block Two, the covenantee of Henry Traver as against the Dickson mortgage, and could rightfully require the application of a sufficient amount of

the purchase money paid by him, to discharge his land from the Dickson lien. (*Coffman* v. *Scoville*, 86 Ill., 300.)

Had Hyde paid the $6,000 to Dickson, and obtained a release of Block Two, or the nineteen lots sold to Goss, it would have left the first security taken by Richardson a lien on that land, and this would have been a fraud upon Goss. Had the $6,000 been paid unconditionally to Mr. Richardson, so as to retire his investment, it would have left the Dickson lien remaining as before, with the certainty of an immediate foreclosure. The money was not and could not have been obtained from Goss, to be used for either of these purposes.

It cannot be contended that Hyde, in making his sale or in his engagement to give a clear title to Goss, was going beyond the scope of his authority as representing the interests of Traver, or that he was traveling in the least outside of the plan originated by the Travers for the disposition of the property.

The purchase money paid by Goss, went directly to Hammond and Bogue. When they received it, they furnished from their own funds a sum, being about the same amount, necessary to make up the balance remaining unpaid upon the Dickson notes, and paid for and took up the Dickson security. Their only possible motive in advancing this money, was to protect the interests of Mr. Richardson. It was to this motive alone that Hyde appealed, when he was compelled to apply to them for relief. His sole inducement for divulging to them the true facts regarding Mr. Richardson's security was to excite this motive. Hammond and Bogue then immediately gave the releases by which Block Two was discharged from the Dickson lien, and the nineteen lots purchased by Goss in Block Two were also freed from the Richardson lien. No further releases were given until proceeds of the sales and loans afterwards made by Hyde, were paid over to Hammond and Bogue.

There was a delay, on the part of Hammond and Bogue, in communicating to Mr. Richardson an account of their

action in taking up the Dickson mortgage upon discovering the facts which vitiated his former security, the only explanation of which is, their hesitation to disturb him about his security, not anticipating any trouble on account of the change. Nothing material for discussion is perceived in this. As the act itself was in accord with his equitable rights, and the spirit of his previous instructions to them, and was ratified when he was informed of it, the matter of the delay is not a circumstance which should in any degree prejudice Mr. Richardson.

In the absence of intervening rights, or the equities of third parties, the relations which Hyde sustained to Traver, assuming that as between them the verbal understandings were valid contracts, may have required that Hyde should have seen to the application of purchase money received by him from Goss or any other purchaser, as a payment and extinguishment *pro tanto*, of the Dickson mortgage. But if this equity existed, it was concealed under deeds importing a different situation of the parties, and it was an equity to which Mr. Richardson was a stranger. Moreover Mr. Richardson held a superior equity. There were other and paramount obligations on the part of both Traver and Hyde to Mr. Richardson, whose money had already gone as a payment on the Dickson mortgage, and whose rights had not been observed or respected.

The Circuit Court decided this case upon the theory that the alleged verbal agreements between the Travers and Hyde must be considered as contracts, binding on all the parties, and that the repugnant contents of the deeds made by them must be disregarded. That Hyde, notwithstanding the power which the Court concedes he had from Traver to procure releases of Blocks Two and Three from the Dickson mortgage, and the fact that he had exercised that power without objection from Traver in procuring the release of Block Three, could, nevertheless, procure no valid releases of Block Two without the express concurrence of Traver. That Mr. Richardson must be treated as a mere second incumbrancer, without regard to the covenants of Traver:

that his security was paid and extinguished before the Dickson mortgage was taken up, and that thereby he became a stranger to the transaction. That Mr. Richardson, in paying for and taking the Dickson mortgage, was not a purchaser, because Dickson had not expressly authorized the bank to transfer it; and that he was acting as a mere volunteer, and could acquire no rights to that security by way of subrogation.

If it were true that the receipt of the money paid by Goss, with the advance made by Hammond and Bogue, had operated as a payment of Mr. Richardson's security before the Dickson mortgage was taken up, it does not therefore follow that Mr. Richardson cannot assert his right to hold that mortgage. When Mr. Bogue received the notes from the bankers who held them for collection, it was not his design to satisfy or extinguish them by his payment. He expressly stated that it was his intention to carry the notes, and requested that they should not be cancelled, and they were delivered to him without cancellation. The intention to continue the existence of the notes, and not to cancel them, was made evident when the money was paid to the collecting agent appointed to receive it, and the owner of the notes received the amount due him. The autorities sustain this transaction as a purchase. (*Dodge* v. *Freedman's Sav. and Trust Co.* 93 U. S. 386). The transfer of the notes carried the security with them, and no further assignment was necessary. (*Pardee* v. *Lindley*, 31 Ill., 184.)

The first security taken by Mr. Richardson, however, was not extinguished by the receipt by Hammond and Bogue, of the $6,000, which was paid by Goss. The amount paid was not aufficient, nor was it received with the intent to retire Mr. Richardson's investment, but to continue it under such security as he was entitled to have had from the beginning. There was no time after Hammond and Bogue received this money, when they could have treated it as they would have had the right to treat the money of a stranger. If Mr. Richardson had become a stranger to the transaction it would have been his privilege to remain a stranger and

retain the money. The circumstances under which Goss paid it did not permit this, as the Dickson lien would then have remained a charge on Goss' land, in total disregard of his equitable rights.

The balance of the money required to purchase the Dickson notes, which was furnished by Hammond and Bogue, was not advanced until the Dickson security was taken up and received into their possession. There was no interval of time between the advancement of this money and the transfer of the Dickson security. It was one act, or if two acts, they were simultaneous. In legal contemplation, the whole transaction was one. It cannot be said that one act was performed before the other, or that there was any period of time before the delivery of the Dickson security to Hammond and Bogue when Mr. Richardson became a stranger. As in the case where a title passes by simultaneous conveyances from A through B to C, and a general judgment lien against the lands of B. cannot attach, for that there is no period of time wherein it can take effect, so here, and more clearly, no time existed wherein Mr. Richardson's character relative to the transaction could change to that of a stranger. When the advance of money had been made, and the Dickson security received, Hammond and Bogue did not even then treat the first Richardson security as wholly extinct. It was certainly kept alive for a time against a part of the land, until, as the payments were afterwards made by Hyde, it was satisfied, and releases were given in parcels from time to time as the payments were received. It is true they testify that they regarded the Richardson notes as paid by the transaction, but the transaction appears not to have been fully completed, until the subsequent payments were made, so as to leave Mr. Richardson's investment standing at $10,000 as before.

But in considering the equities of Mr. Richardson he is not to be treated as a mere second incumbrancer, nor can the covenants of Henry Traver be disregarded. Mr. Richardson was already entitled to be subrogated to the Dickson security, to the amount of his loan. His money had been applied to

the payment of an installment of the senior incumbrance, under the promise of a security to himself of equal grade. He had a right as against both Hyde and Traver, to the security he contracted for, and failing to receive it, his equity remained. His equity of subrogation, as against the mortgagors, was not created by the payment of what then remained due to Dickson, nor could it be defeated by such payment, with the money of either Hyde or Traver, unless such payment had been effective to make good his former security as a first lien on all of Block Two. No such payment was or could have been made by Hyde or Traver. Block Two was the only resource upon which they depended to obtain the means wherewith to pay Dickson, and that was not available for the purpose, without releases from the existing liens upon it.

By taking the Dickson notes and deed of trust, Mr. Richardson was only placed in his rightful position. Traver was in no worse position than he was before, and if he had been, it would have been the result of his own voluntary exposure to the hazards attendant on the carrying out of a speculation with which Mr. Richardson had nothing to do, and for the disasters of which he ought to be held in no way responsible.

RELATIVE SITUATION OF RICHARDSON AND TRAVER.

The relative situation of Charles A. Richardson and Henry Traver in respect to the transactions in question, will be considered by the Court, with reference to the inquiry naturally arising, as to what degree of care was exercised, or should have been exercised, in order to avoid the complications which resulted; and which of the two parties most contributed by act or omission to bring about that condition of affairs from which one or the other must suffer in the end. Both were acting through the agency of others. The original fault was that of Traver, in trusting Michael and Hyde respectively, to perform private parol agreements, repugnant to the express and plain import of the deeds by which they

were consummated, and in empowering and permitting Hyde to obtain releases without limiting his discretion. The authority reposed by Mr. Richardson in Hammond and Bogue, to manage the investment of a certain sum of money in a loan at interest, on safe security, was of a character very different from the authority which Traver had committed to Hyde, as his representative in the general management of a hazardous speculation, where, though Traver may have had not much to lose, he was to gain an extraordinary profit in the event of success. Traver was voluntarily taking large risks. Richardson was not. Richardson resided at a distance remote from the locality of the transactions in question. For more than two years after the time his loan was made, it was his full understanding and belief, as well as that of Hammond and Bogue, his agents, that his security was a first mortgage, as contracted for, and he rested in that sense of safety which is usual and reasonable under such circumstances, but in which a man whose means are exposed to the perils of speculation has no right to indulge. He was entirely ignorant of the scheme in which Traver and Hyde were engaged, and of all complications caused by it. Traver had full knowledge of all the particulars. He knew all about the alleged private contracts and understandings which he now insists affected the property, and he most easily could have prevented the complications wherewith the case is infested. He had ample opportunity, by reason of his near residence, to exercise a constant personal observation and supervision upon the acts of Hyde; to obtain immediate and full information of all that was passing, and to communicate with Ayres, the trustee of the Dickson incumbrance, at any moment. He knew that Hyde was dealing with third parties; that the plan he was pursuing was an exceedingly risky one, under which it would be very easy to involve third parties in such manner that a loss might eventually lie between a third party and himself.

In view of these facts, an imperative obligation surely rested upon Traver, to exert a reasonable vigilance for the protection of others as well as himself. What is there in

the proof to show that this obligation has been however imperfectly discharged? Not a word. No attempt was ever made by Traver to arrest the course of Hyde's transactions, or to sound any note of warning which might be heard by the trustee or any stranger to the speculation, until he perceived that he, himself, instead of a stranger, was most likely to suffer the consequences of a possible miscarriage of the plan which Hyde was striving to carry out for their mutual advantage and profit.

Counsel for appellant is unable to perceive that there is any reasonable view of the law applicable to this case which would exclude appellant from relief, but is confident in the belief that there is to be clearly discerned a superior equity in his favor, and that the decree of the Circuit Court was erroneous and should be reversed.

FREDERIC C. INGALLS,
of Counsel for Appellant.

112-423

SUPREME COURT OF THE UNITED STATES.

October Term, 1884.

No. 85.

CHARLES A. RICHARDSON,

Appellant,

vs.

HENRY TRAVER.

Consolidated with CHARLES A. RICHARDSON, Appellant, vs. HENRY TRAVER, MICHAEL TRAVER, and others.

APPELLANT'S REPLY TO BRIEF AND ARGUMENT OF APPELLEE.

FREDERIC C. INGALLS,

of Counsel for Appellant.

Curtiss & Childs, Law Printers, Utica, N. Y.

Supreme Court of the United States.

OCTOBER TERM, 1884.

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CHARLES A. RICHARDSON, APPELLANT,

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Consolidated with CHARLES A. RICHARDSON, Appellant, *vs.* HENRY J. TRAVER, MICHAEL TRAVER, and others.

APPELLANT'S REPLY

TO BRIEF AND ARGUMENT OF APPELLEE.

It is insisted by Counsel for appellee that the parol agreements, upon which they base Traver's alleged equities, are admissible in evidence between the parties to them, and that they also affect Mr. Richardson, because he had notice of them. I deny that they can be held of any force, even as between the parties, and have never said that this may be so. But I maintain as a separate proposition, that if it were possible to hold them valid between the parties, no notice is established to affect Mr. Richardson.

I contended further, as another and distinct proposition, that if the verbal agreements were to be treated as effective contracts, made with the knowledge of all the parties, it does not appear that Hyde went beyond his authority from Traver, or departed from the plan originally formed by the Travers for the disposition of the property.

Counsel for appellee, in their argument, seem to have confounded these distinct propositions, and to conceive that appellant's case depends upon the maintenance of each and every one of them. If this is not so, then they must have

sought to confuse the whole case, in attempting to make complications appear where none really exist.

I.

Mr. Richardson loaned the $10,000 to Hyde upon the express agreement that it should be applied in payment of an installment of Dickson's mortgage, and that Block 2, which was to be Mr. Richardson's security, should be at once released from Dickson's lien. Mr. Hyde received the money and Mr. Richardson received the two trust deeds, executed by Hyde. Richardson then, through his trustee Hammond, became the covenantee of Hyde, and also the covenantee of Henry Traver, as against the Dickson mortgage, because these trust deeds carried Traver's covenants contained in his former deeds to Earl and to Michael Traver. Richardson was a junior mortgagee, but with the agreement of Hyde, and the covenants of Hyde and both the Travers, against the senior mortgage. Hyde's agreement, and the covenants he had made in the two trust deeds to Hammond for the benefit of Richardson, required the immediate discharge of Block 2 from Dickson's mortgage. Henry Traver's covenants, made in his deeds to Earl and to Michael Traver, and transmitted first by the deeds of Earl and Michael to Hyde, and then by these trust deeds executed by Hyde to Hammond, for the benefit of Richardson, required exactly the same thing. There was not only a covenant and agreement between Hyde and Richardson, but also between Traver and Richardson. Hyde paid the money over to Dickson, but took a release of Block 3 instead of taking the release required by these covenants and agreements. Hyde and Traver's agreements and covenants were broken. Mr. Richardson had the right as against both Hyde and Traver to the security which these covenants, if kept, would have given him. Failing to receive it his equity remained—and this equity was equally against Traver and Hyde.

Mr. Richardson's equity entitled him to be subrogated to Dickson's security to the amount of $10,000, which he had paid as an installment thereon. This equity was subor

dinate to Dickson's security for the remainder of that mortgage, otherwise Richardson stood on an equality with Dickson, as against both Hyde and Traver. The Dickson mortgage then stood equitably as a security for the benefit of Dickson and Richardson for over $21,600, as against Traver. Now, without stopping to go over all the details, a payment was made with money partly furnished by Hammond and Bogue, of their own funds, and partly by the avails of the sale to Goss, by which this Dickson mortgage was reduced to $10,000 and Block 2 was released from the lien of both incumbrances, with Mr. Richardson's consent. The release of Block 2 from the Dickson lien being procured by Hyde was done, we contend, in pursuance of his power and authority from Traver, but aside from that, the transaction was also consistent with the rights and equities of all the parties interested, under the terms of the conveyances which Traver had executed. It was the right of the grantees of Hyde, either as incumbrancers or holders of Block 2, to require, as against Traver, that Block 1 should be held primarily liable for the payment of the remaining part of the Dickson mortgage, and Traver is estopped by his covenants from claiming otherwise.

There was an attempt on the part of appellee to complicate this matter, by referring to the conveyance of Block 1 by Michael to Henry. I am not prepared to admit that precedence in the execution of one partition deed over another could give any advantage to the partitioner receiving it. It is not the intent of a mere partition to give any precedence in equity to either party. The agreement for partition—the consideration for the deeds—is of one date, and the accidental execution of one deed before another, is no foundation on which to base any such claim as that set up by appellee. Henry's deed to Michael contained a covenant which embraced the Dickson mortgage, and was dated Dec. 20, 1872. The deed from Michael to Henry was not introduced in evidence, and we have consequently no proof of its date or record. The fact of the conveyance was stated in the pleadings on both sides, but beyond that fact there is no proof. It was not a deed of Block 1, but of Michael's undi-

vided half of Block 1, and it was certainly not made until after the deed from Henry and Michael to Earl was executed, because that deed was made before any partition or even agreement for it had been had. The evidence is perfectly clear that the Earl deed was the first alienation after the Dickson mortgage was given by the Travers, and besides that, it contained full covenants of warranty and against all incumbrances.

As matters stood at the time when Hammond and Bogue discovered that Mr. Richardson's deeds of trust first taken were not first liens, the utmost that Henry Traver could claim was, that the 18 lots, being that part of Block 2, not included in the Earl deed, should be sold in satisfaction of the Dickson incumbrance, prior to that interest in Block 1 conveyed to him by the deed from Michael. Now counsel for appellee have indulged in some figuring in their argument (page 59) respecting the value of Block 2, and they refer to Bogue's valuation, as stated in a letter written in December 1872, as proof that it was then worth $25,000. Doubtless the value of the property had been over-estimated, but however that may be, it shows at the most, its probable value at the time the letter was written. They then refer to Hyde's testimony, showing that he had built two 2 story buildings, worth $5,500, on Lots 31, 32, and 35, 36, in Block 2, and adding this to the former sum, they make up $30,500 as the value of that block, and say that Block 2 was worth over three times the amount due to Richardson—that it was amply sufficient to pay Richardson. But on page 80, arguing in another direction, they say that by the 1st of January, 1875, values had shrunk so rapidly that Bogue became alarmed, and fearful that Hyde's equity of redemption in Block 2 would not pay the two Richardson notes. Unquestionably there had been a great shrinkage of values between December 1872, and December 1874. Appellee has furnished us his own evidence of the value of the block in April 1875. Michael Traver (record p. 197) answering the interrogatories of appellee, testifies that Lots 26 to 29, (all inclusive) were worth about $250 apiece, and that the other lots in the block

were worth from $300 to $350 apiece. Taking their own testimony, the eighteen lots, being Lots 1 to 9 and 41 to 48 (all inclusive) not included in the Earl deed, at $325 each, were worth $5,850, which is less than the sum paid to Dickson, derived from the sale of the Goss lots alone. The buildings erected by Hyde were on the lots which came through Earl. (Record p. 132, where Hyde gives the numbers of the lots on which the buildings were erected.) Consequently the buildings could add nothing to the value of that part of the block which alone Traver might by any possibility claim should be sold before the sale of that undivided half of Block 1, conveyed to him by Michael. In other words, had that part of Block 2, which alone Traver could set up any claim should be first exhausted, been sold on a foreclosure, it would have produced $5,850, which deducted from $21,650, would leave $15,800 to come upon Block 1. But when Block 2 was released, the Dickson mortgage was actually diminished by the sum of $11,650, and the sum of $10,000 instead of $15,800 was left standing against Block 1.

The only other attempt which seems to have been made by counsel for appellee, to attack the position which I hold as to the equitable rights of appellant, under the first proposition, is on page 75 and 76 of his argument, where he says in substance, that as between the Travers and Hyde, it is allowable to show the oral contracts, they being the sole consideration for the respective conveyances from Henry to Michael, and from Michael and Earl to Hyde. That as to Richardson the question is not *mainly* whether a parol contract can be shown, to contravene a written one, but whether a parol contract has been executed; and that the statute of frauds cannot be invoked against a completed contract. That according to appellant's theory, all his rights are under the Ayres trust deed, and he can not under that deed claim to be an assignee of the covenants of Traver, because Traver's covenants are contained in subsequent deeds, and covenants do not run backward but forward.

Now it is not a fact that the only consideration to Traver for his conveyances, was the agreement of Michael, and then

of Hyde, to pay the Dickson mortgage. It appears that he received a conveyance of all of Michael's interest in Block 1 and the 8 lots in Block 3, which, the evidence shows, was about equal in value to all the interest which he conveyed in Blocks 2 and 3. The agreement to pay off Dickson was additional to what seems to have been a full consideration to Henry for his conveyances. Michael stepped out in such manner that the agreement became substantially one between Henry Traver and Hyde, and Hyde also procured an additional security for the payment of Dickson, by the indorsement or guaranty of Snyder & Lee, which was then good for the whole amount of the debt.

The idea that anybody ever argued or asserted that covenants run *backward* along the chain of title, is purely imaginary on the part of counsel for appellee, and arises from entire misapprehension of the argument of appellant.

There is no opportunity here for appellee to invoke the doctrine of law respecting the application of the statute of frauds to an executed parol contract. If a parol contract be made in a case where nothing but a written one could be legally enforced, it is true that after the execution of the parol contract, there is no further application of the statute of frauds. But in this case written contracts *were* made in which the respective agreements of the parties were consummated. The verbal agreements were superseded—merged in the deeds, and no longer existed. They were inadmissible as evidence, not only under the statute of frauds, but under an elementary and fundamental rule of law, which excludes the evidence of all prior and contemporaneous verbal understandings, to contradict or vary the terms of a written agreement, to extinguish a covenant or invalidate the legal effect of the instrument.

II.

In the Brief and Argument of Appellant, I have related what I believe to be the essential facts fairly to be derived from the whole evidence, without commenting upon the character or credibility of witnesses.

Before further discussion respecting notice, or collusion between Hyde and Bogue, which appellee insists is fully proved, it may be proper to make some observations in reply to what is said by appellee on this point.

Appellee says that Hyde was a rascal, and that appellant agrees in this opinion, and therefore Hyde's evidence, except when corroborated, can scarcely with good grace be relied on by appellant, when swearing in his own interest.

If I have treated Hyde as a rascal, it is because he appears to have been engaged in rascally transactions. But in all the evidence there is exposed no more rascally transaction than the Earl deed and mortgage. To deliberately manufacture a security in that way, for the purpose of imposing on the credulous or confiding, is a vile and shameless piece of rascality, such as is seldom encountered, and could never be practiced except by abandoned persons, who in their reckless haste for riches are oblivious of all moral or equitable obligation, and regardless of the rights of others. The proof does not show whether the fraudulent intent originated with Henry or Michael. But both participated equally in what was done, and the opprobrium attaches to both. It is an illustration furnished by themselves, which affords to us a more certain view of the kind of moral perception which influenced their conduct, than could be obtained from all the testimony they could give. Can the evidence of men who are shown to be capable of such acts be received with any confidence, when given in their own interest, and especially when undertaking to establish admissions by the statements of others? There can be but one answer to this question, and that without hesitation.

Counsel for appellee decline to defend or apologize for this fraud, but say briefly that this and the falsehood disclosed in the trust deeds first taken by Mr. Richardson, "are "too remote to be discussed, and form no part of the matters "in controversy."

The transactions were connected with the subject in controversy, and the facts showing the duplicity were introduced by their own evidence, and prove that this business on

their part, was infected with fraud from the beginning. Both the Travers are shown to have been guilty of false pretenses deliberately made for purposes of deception. They are convicted of this by evidence which they cannot deny or contradict.

There is no proof of a fraudulent act or of fraudulent intent on the part of Hammond or Bogue towards anyone. It may be said with respect to Hyde, that at the time he gave his testimony he had no real pecuniary interest in the result, as he was hopelessly insolvent, in bankruptcy, and would himself receive neither benefit nor injury, whatever might be the result of the suit.

In considering the question of the alleged notice and collusion, it is to be observed, that it is shown very clearly that there was but one understanding when Mr. Richardson's loan was made. He was to have a purchase-money mortgage, giving him a first lien on Block 2. The only notice to Mr. Richardson, or to Hammond and Bogue, beyond the fact that Hyde could give such a mortgage, was that Michael Traver was the vendor of the land to Hyde, and the first payee of this purchase money mortgage, and that he had received the balance of the consideration in full. Actual notice of these facts was given by the notes and deeds of trust, received by Hammond and Bogue, and by them sent on to Mr. Richardson. There is no pretense that Hammond and Bogue then knew anything about Traver and Hyde's agreements, or about the ownership of Block 1. Their attention was not directed to Block 1, but to Block 2, which alone they were to have as the security for the loan. The agreement and the covenants of Traver and of Hyde were broken immediately when the deeds of trust were delivered. There is no pretense that Hammond or Bogue had any notice, or were engaged in any collusion with Hyde, until long after Mr. Richardson's equity was established and existing.

The most noticeable attempt to make proof of knowledge on Bogue's part, of the private agreements of Hyde and the Travers, and on which appellee relies and comments at great length, was by the evidence of Michael, whose testimony in

itself shows him to be an unfair and unreliable witness, aside from the other facts which discredit him. This testimony of Michael, and the rebutting testimony of Bogue, (record pp. 146–147,) I have referred to in my former argument, and I think, said all that is necessary about it. It is easy to see how Michael distorted a conversation with Bogue, which took place after Mr. Bogue had heard the fact of Henry's ownership asserted by Henry, and had learned that there was some kind of a contract, into an apparent admission of the facts which appellee wished to make proof of. Mr. Bogue, even at the time he gave his testimony, knew so little about this "contract" that he evidently supposed it to be a written contract. He says: (record pp. 146–7,) "I did not inquire "as to the points of the contract; I never saw any contract."

What reason could there be for Hyde to make any communications, frequent or otherwise, to Bogue about these secret agreements, or Henry's ownership of Block 1, after Hyde had got Mr. Richardson's money, and accomplished the present purpose of himself and Traver? There was every reason in the world for Hyde to avoid all allusion to the subject. Hammond and Bogue and Richardson were resting quietly in the belief that the security they had taken was a primary lien on Block 2. Would Hyde be crazy enough to give them information, or direct their attention in any way to a subject which might start an inquiry and investigation that would disclose the truth to them, and at once involve him in difficulty? Would he do the least thing tending to disturb their fancied security? Certainly not.

The witness Wolf was a crony of Michael Traver, brought in by Mike to swear to an "admission" made by Bogue. No foundation was laid for the testimony, but aside from the question of its admissibility, the evidence is plainly worthless, and is alluded to by appellee but in the briefest manner. No credit can be given to such an attempt to swear to an isolated statement, made so long before, in the hurry of business, in a matter in which he had no interest, and to fix the time with no better data. It is manifest that this testimony is wholly unreliable. If the witness ever had any in-

terview with any one at Mr. Bogue's office, in which Traver's subdivision was mentioned at all, it was with Hyde and not with Bogue, and long after the time he pretended to fix in his first statement. The witness said afterwards, (record p. 185,) that he had been in Mr. Bogue's office half a dozen times ; had negotiated about a fruit farm in Michigan some two or three weeks, which was some two months prior to the occurrence he had before testified of. Mr. Bogue, after contradicting this witness, as to the pretended interview and conversation, was asked on his cross-examination, if he had ever had in consideration any Michigan fruit farms, and replied that he had had nothing to do with fruit farms in Michigan until after Mr. Hyde came into the office ; that Hyde had introduced the fruit farm business into the office. Mr. Bogue then referred to the entry-book kept in the office at the time the events occurred, and gave the names of several fruit farms in Michigan. The first fruit farm entry in the book was made on the 1st of March 1875. This was a reliable method of fixing the time, and Wolf's visit to Bogue's office, according to his own testimony, was some two months afterwards.

The idea that Bogue had notice of this secret claim of Henry, or of his ownership of Block 1, before being informed by him, about the first of April 1875, and was in collusion with Hyde to injure Henry, is against the true facts and the weight of all the evidence. It is well answered by appellee himself, on page 51 of his argument, where he says "Hyde literally forced Hammond and Bogue from step to "step." How could this be possible if they were in league and collusion, as elsewhere argued?

Appellee has sought in this connection, to make much of the fact that Hyde was an indorser of the Dickson notes. He makes many assertions that Bogue was aware of this ; that he had notice that Hyde had guaranteed the notes, "and "that he was to pay them with the very money loaned by "Richardson on Hyde's own notes." Appellee also says, (p. 70,) "this liability was not merely to Dickson, as appellant "claims, but an absolute liability to pay the Dickson notes."

The difficulty with appellee is, he assumes there was a liability beyond and different from that shown by the indorsement, and that notice of the indorsement and the liability under it as a guarantor, was also notice of the other and different liability which existed, if at all, by virtue of a secret agreement. The indorsement showed a contingent liability to Dickson, which became absolute on the default of Traver to pay the notes. It was no more evidence of any obligation on the part of Hyde to Traver, than was the indorsement of Snyder and Lee evidence of an obligation on their part to Traver. No doubt Bogue knew the $10,000 loaned by Richardson to Hyde, went to Dickson. It was loaned for that express purpose. But according to the trust deeds taken to secure this loan, and all the other deeds on record, Hyde had paid all the remainder of the consideration for the land in full.

The real position of Hammond and Bogue with respect to Hyde and Traver is not difficult to see. Hammond and Bogue supposed Hyde to be the owner of the whole subdivision, as Ayres did also, (record p. 126.) They knew he was an indorser and responsible to Dickson as a guarantor of the notes; that the trust deed securing the notes was a lien on both Blocks 1 and 2, which they supposed to belong to Hyde, and they no doubt recognized the fact that Hyde was interested in the notes, and in preventing a foreclosure by Dickson. But they knew nothing of Traver, or of his private relations or agreements with Hyde, until informed by Henry just before he filed his bill.

Now the authorities agree, that in order to affect a third party by facts extraneous to a deed, proof of his knowledge of such facts must be clear, positive and satisfactory, and I contend that appellee has totally failed to present such proof, on the whole evidence.

III.

If the parol agreements were to be admitted in evidence, we should have an immediate example of that evil which the rule of law excluding them is intended to avoid. There is a conflict of evidence about what was understood in the verbal agreement between Hyde and the Travers. Hyde says, and has always insisted, that it was the understanding that he should have entire control of the whole subdivision, so far as related to incumbrances, and should procure releases as he and Dickson might agree; and that Block 1 should remain, if necessary, the last to be released. Hyde says Henry knew of and assented to this arrangement. The Travers, though testifying that Hyde was to procure releases, say there was no express understanding as to the manner in which they were to be procured, and say that Henry was not at Hyde's office to see him until July. Counsel for appellee insist that Henry knew nothing about the release of Block 3 until July, and was ignorant respecting the whole transaction until that time. Mr. Lee testifies that he saw both Henry and Michael at the office, about the time he indorsed the Dickson notes, and other circumstances seem to corroborate Hyde. Henry himself does not undertake to say he knew nothing of the release until July. He said (record p. 111) he did not know whether he knew of it prior to July or not. It is highly improbable that any person would be substituted in the place of Michael to carry out a business arrangement involving the success of the speculation in which Henry was engaged, without his full knowledge and consent; and it is altogether unreasonable to suppose that Henry was not fully informed of what Hyde had done as soon as it was accomplished. Its effect was to relieve the apprehension both he and Michael were under, of a collapse of the whole affair. It is simply incredible that Henry was obliged to wait in suspense from January until July, before being put in possession of the facts.

Hyde was not applied to as a capitalist, who was expected of his own means to furnish funds. He was applied to, not for money, but for his aid in ob-

taining money from others. The difficulty in obtaining money was, that the securities they had taken on the parcels of Blocks 2 and 3 were all subordinate to the Dickson lien, and Michael could not procure money on them without first obtaining releases from Dickson, and Dickson would not give him any releases without first having some payment. According to the Travers, it is apparent that Hyde stood in no different relation to Henry, and had no less authority over the business than Michael had possessed, and the express agreement, as testfied to by Hyde, is in accord with the implied understanding when Hyde succeeded to the place of Michael. In the conflict of testimony between Hyde and Michael there is in one instance, an opportunity to test the truth of the matter by other facts in the record which cannot be questioned, and it shows, what is otherwise evident, that Michael's testimony is not to be depended on. Hyde testified that it was a part of his agreement with the Travers that the Earl lots should be deeded to him, (record p. 129) and that he received the deed executed by Earl, and that made by Michael at the same time, (record p. 131.) Michael Traver, on his cross-examination, testifies that he turned over Earl's notes to Hyde, and then at Hyde's request this deed was made by Earl, and the Earl notes were then cancelled. He says "The matter with Hyde was closed "by me when I passed Earl's notes to Hyde. After that "Hyde requested the deed from Earl upon the surrender to "Earl of his notes." Being then asked if the Earl deed was "not made at the same time his own deed was made, he says: "I think not the same day; It may have been dated though "the same day." "I think my deed to Hyde was executed a "few days before the other," (record p. 122.)

Now Michael's deed bears date, December 28, 1872, and was acknowledged, January 6, 1873. The deed made by Earl bears the same date and was acknowledged January 3, 1873, three days before Michael's deed was acknowledged. Michael had taken it into his head that it was an advantage to his side of the case to have it appear that the matter was closed with Hyde before the Earl deed was executed,

and he swore to it accordingly without any qualification, until he was brought down to the question of the date of the execution of the deeds. Remembering then that the deeds themselves would have something to say about this, he ceased swearing positively, but "thinks" the Earl deed, which was in fact executed three days before, was executed a few days after his own deed.

Hyde stated that the conversation he had with Henry Traver was about the 10th of January, or somewhat later; (record p. 170.) Appellee to rebut this, produces two unique letters written by Mike to Henry, one dated January 4th, the other dated January 8th, and insists that because Henry was in Wheaton on those dates, he could not have been in Chicago, as testified by Hyde. No comment is necessary upon this.

Now it is conceded by the Circuit Court, that Hyde had power and authority to procure releases of Blocks 2 and 3, but the Court thinks this power must be held to be restricted so as not to be exercised to the possible injury of Henry. The Court in the opinion (record p. 270) says: "There is "no objection made to the release by the trustee of Block 3. "This was in pursuance in part of the agreement made be- "tween Henry and Michael, and in pursuance further of the powers of Hyde to relieve that as well as Block 2 from "the operation of the Dickson incumbrance. It is unneces- "sary therefore to discuss the release of Block 3 further, as "Henry J. Traver and Hyde, who represented Michael Tra- "ver and Dickson, all agreed to the release." Further, on the same page the Court says: "Block 3 being released, Mich- "ael having parted with all his interest in the property, and "being represented by Hyde, who had borrowed money of "Richardson and given the mortgage on Block 2, it would "seem there could be no act done effecting the interests of "Henry without his consent express or implied. Michael "states that he had an understanding with Henry that he "might obtain releases from Dickson. I think that must be "understood to mean that they should be consistent with "Henry's interest in the property, and so as not to jeopard

"his rights in any way." The court further says he thinks the fact that Henry knew of or assented to the release of Block 3, did not authorize the trustees or the parties to procure a release of Block 2, without Traver's consent.

How could Hyde possess any power or authority from Traver to relieve Blocks 2 and 3, from the operation of the Dickson incumbrance if he could do nothing except by Traver's express consent? What would such a power amount to? If he had any power and authority from Traver, he was, to the extent of such authority, Traver's agent and representative, and his acts in that character were the acts of his principal. If under color of authority, he performs a certain act in a representative character and the principal acquiesces therein, the act is not only confirmed, but also the right of the agent to so represent the principal. Although Bogue, and Ayres the trustee, were both totally ignorant of the alleged parol agreements, and both in fact supposed Hyde to be the owner of the whole subdivision, yet if Hyde was, by the verbal agreements, or by Traver's acquiescence in a former act which Bogue and Ayers knew Hyde had preformed, authorized to represent Traver in consenting to releases, Traver cannot repudiate the act because Hyde in performing it assumed to be the owner, instead of the owner's representative.

Some one had to appear before the trustee as representing the owner, in order to procure releases from the trustee. Hyde did so appear, and first obtained the release of Block 3. Henry took no action either to repudiate or check the exercise of such authority by Hyde, and the effect must be the same in respect to third parties, as in other cases where one is permitted to perform acts as representing another without question. Appellee in his argument says, (p. 66,) that the fact that Traver "did not complain when he was *not* "injured, will surely not prevent him from complaining when "he *is* injured." That is exactly what it will prevent. When Traver permits another to act for him and represent him, acquiescing in such acts, and waits until he is injured before checking or interrupting the exercise of the authority so sanctioned, he will find that he has waited too long, and that he is estopped to deny what he has so confirmed.

IV.

It is insisted by appellee, that the case of *Dodge* v. *Freedman's Sav. and Trust Co.*, cited by appellant, is not in point, because he says there is no evidence that it was not the intention of the owners of the notes to sell them, and the Trust Co., dealt with the bank holding the notes in the ordinary way. In the case at bar, he says, it was not the intention of Dickson, to sell; he says further, that the notes were sent forward for collection, and that the bankers, through whose hands they passed, in indorsing them, made them payable to Preston, Kean & Co., *for collection*, and that such indorsement was restrictive, and suspended the negotiability of the notes.

As as I understand, the restriction imposed by such indorsement, operates to prevent the absolute transfer of the property in the note to the bankers who receive it, as against the owner. They receive it in fact as the agents of the owner, and such indorsement does not pass the legal title to the property as between the owner and the agent. But, as between the agent and maker of the note, it passes the legal title. *Laflin* v. *Sherman*, 28 Ill., 397.

The case in this Court, (1 Wall., 173,) and the other cases referred to by appellee, involve the question whether the banker who receives a note under such circumstances, can hold it and transfer it by his indorsement, as against his indorsers, and as against the owners; and the courts have held that such right and power does not pass, because the bank so holding the paper, is the agent for the owner of the note and cannot use it for his own benefit or credit.

The case of *Dodge* v. *Freedmen's Sav. and Trust Co.*, is a different case, and is in point with the case at bar, so far as concerns the questions raised by appellee. The Court says: (p. 385.) "The books are full of cases to the effect that an "agent, to whom a bill is sent for collection, cannot lawfully "transfer or pledge the same in payment of his own debt, "and that the transferee with knowledge or after maturity, "gets no title as against the true owner."

"By law a collecting bank is the agent of the holder of the "note, and in no sense the agent of the maker. What the "holder was entitled to was his money, or the proper dili- "gence to obtain it. If the maker had anything to say or "do in the premises, it was to present himself with the money "when the notes matured, pay them and secure his obliga- "tions. Failing in this, he leaves the securities to be dealt with "as others interested may choose. There would appear there- "fore, to be no objection to a transfer to a third person pay- "ing the money, instead of a technical payment and discharge "of the notes. It is to be observed also, that payment "technically, can only be made by a party to a bill, or by a "stranger, *supra protest*. Such parties may either pay in sat- "isfaction of the note, or pay and hold it as by transfer, "leaving it as an existing security. It can therefore make "no difference to the holder, whether when taken by a "stranger it is taken and held as upon a transfer or in satisfac- "tion of the instrument."

There are in appellee's argument, many erroneous and unfair assertions in regard to the facts, and the positions occupied by appellant. He has taken any detached portion of testimony by whomsoever given, as true, whenever it suits his purpose, rejecting everything which he does not, for the time agree with. He assumes the right to take Michael's version of anything said by Hyde or Bogue at any time or under any circumstances, as perfectly legitimate and conclusive evidence against Mr. Richardson, by way of "admission." He has in several instances controverted in one place a position he has assumed in another. His idea respecting the intent and object of the parties, seems to depend on his own conjecture at the moment, which differs in different parts of his argument. In order to make out what he considers a favorable showing for appellee, he assumes that fraud may be established by inference, and that when a transaction is perfectly capable of a construction consistent with honesty of purpose, he has a right to construe it into evidence of dishonesty.

Without undertaking to point out every instance of error or misstatement, it may be proper to refer particularly to some of them. Appellee several times asserts that an injunction issued against Richardson. This is not the fact. On p. 4 he says, "Hyde took all the assets which belonged "to Michael, under his contract with Henry." The Earl mortgage constituted the main part of these "assets." Hyde got no money. If they had ever taken any, it was secured and retained by Michael, and the other "assets" so far as any use of them could be made by Henry or Michael, were absolutely worthless. On p. 18 appellee says, in italics, "Carton testified that Bogue said he would carry the notes "for Hyde," and reiterates the statement on p. 33. Carton said on his direct examination, "My recollection is, "he said he would carry those notes for Mr. Hyde, and did "not wish them cancelled." On cross-examination he says, "I do not state positively that he said so. I understood "that Mr. Bogue was carrying the notes; my recollection is "that Mr. Bogue said he was paying for the notes, and not "Mr. Hyde; I do not recollect whether he said he bought "or purchased the notes." On p. 67 appellee speaks of appellant's claim, "that Richardson and Hyde did nothing "more than the covenants of Henry's deeds gave them "*notice* they had a right to do." Appellee should have said, "nothing more than these covenants gave Mr. Richardson "the right to do." It was not in that connection, a question of notice, but of right under the covenants.

Appellee has occupied much space in asserting and reasserting that the Dickson notes were not purchased, but paid; that the money paid was Hyde's money; that the money paid by Hammond and Bogue, instead of being charged to Richardson as it should have been, was charged to Hyde. On p. 63 he says, that appellee is neither interested in nor liable on the Richardson-Hyde notes; and on p. 37 he argues that Bogue paid the Dickson notes for Hyde, and held them "as collateral for moneys loaned "Hyde." This last hypothesis would of course imply that Hammond and Bogue had deliberately surrendered what

security Mr. Richardson had, leaving him to take the chances of being paid or not, and appellee makes various conjectures as to how it was expected he might be paid.

Appellee loses sight of the fact that, although not liable on the Richardson-Hyde notes, Traver was liable on the covenants transmitted by the deeds securing those notes, and overlooks the circumstance that the money paid for the Dickson notes was not and could not have been obtained by Hyde. An essential part of the consideration upon which Goss paid that which was received from him, was the release of his land by Mr. Richardson: and that advanced by Hammond and Bogue, and the release of Block 2 by Hammond as trustee, was upon consideration of receiving the Dickson security for the protection of Mr. Richardson. True, it might have been proper, under the circumstances, that the money they advanced should be charged to Richardson. But it was in fact advanced by them from their own funds for the benefit of Mr. Richardson. Hyde induced them to take up the Dickson security, not by representing his own needs, and asking assistance, but by disclosing the the fact of Mr. Richardson's jeopardy. It is clear enough that the object and intent of Hammond and Bogue in all they did, was to relieve Mr. Richardson from this jeopardy.

The substance of the transaction was to take the Dickson mortgage, which was a first lien, in place of the other mortgage, which, contrary to the agreement of all parties, was a second lien. There is no complaint that the $6,000 paid by Goss was not as much as his nineteen lots were fairly worth. They were worth just about $6,000 at that time, according to the testimony of Michael, (record p. 197.) This $6,000, when paid, was treated as an extinguishment, to that extent, of the Richardson mortgage, and the Goss lots were released. The payment made by Hammond and Bogue, of their own funds, was not treated as an extinguishment of the remainder of the Richardson incumbrance, but when Hyde repaid this advance, that was treated as an extinguishment of it, and releases were given. There is nothing in the whole matter inconsistent with good faith towards

Richardson on the part of Hammond and Bogue, and to impute bad faith where good faith can be equally well supported, is at variance with an ordinary and well established rule of law. That what they did may have incidentally benefited Hyde can be no cause of complaint for Traver. The fact, if it existed, that they were friendly towards Hyde, does not in itself, as would be inferred from the assertions of appellee, afford any evidence of an intent to defraud or injure him.

I have not considered that Mr. Richardson's equitable rights in the Dickson security were originated by the transaction in January 1875, and do not attach that importance to the details which appellee has sought to give them. Nevertheless his assertions and conjectures are not warranted.

Appellee's statements of his position in a legal point of view, upon this whole transaction, are so confused and contradictory, that it is not easy to conclude what his real theory is. On page 22 of his argument, appellee says that either in January, 1875 or at the time Traver's bill was filed, Hammond and Bogue and Hyde entered into a "deliberate "fraudulent conspiracy," not merely to shift the lien of the Richardson notes on to Block 1, but also to *persuade Richardson* that the purchase of the Dickson notes was made on his behalf. Yet he says (p. 24) it was probably, at the time of the payment of the last two Dickson notes, the intention of Hammond and Bogue to realize enough from the sale of the lots in Blocks 2 and 3, to pay up the Richardson loan and *keep from Richardson any knowledge* of the release of Block 2 from the Richardson trust deed; that the claim that the Dickson notes were purchased was probably an after thought, when Hammond and Bogue and Hyde's assets were exhausted, and not enough had been sold to pay Richardson. On p. 64, he makes Ayres a party with Hyde and Bogue to the "conspiracy." Then he says, "Hyde "was not to be trusted, as he had already deceived Bogue," and that "Hyde would never have consented to have the Goss "money applied, except in payment of the Dickson notes, for

"by such payment only could he get Block 2 clear from the "Ayres trust deed, and *force* Hammond and Bogue to such a "course as would enable him to clear Block 2 completely." (pp. 48–49.) "Again he says, (p. 51.) "Hyde played his "cards very shrewdly and literally *forced* Hammond and "Bogue from step to step." And on p. 71, he says, "Ayres was deceived and induced to release Block 2." Instead of being in league, he now says Hammond and Bogue were forced into doing what they did, and Ayres was deceived.

How could Hammond and Bogue be *forced* into doing any thing, unless they were standing by the rights of their principal? They had no other interest whatever in the business. It was only while representing his interest and working for his protection, that they could be forced.

On p. 38 appellee says, "It is absolutely essential to ap- "pellant's theory, to show that the Richardson notes were "paid." On p. 40, "this supposition that the Richardson "notes were paid, is in direct contradiction to facts testified to." "Bogue and Hyde admit the Richardson notes have never "been cancelled or given up to Hyde, showing that they as "well as Richardson, did not understand they were paid." Going on to argue at length that the notes were not paid, he says, (p. 43.) "The most convincing proof is found in "the fact that the Richardson loan was kept in force as late "as June 30, 1875." Again, (p. 45) "That Richardson never "intended to give these Hyde notes up, or understood they "were paid, is perfectly evident from various things."

Now, on p. 77, appellee says: "It is apparent that Rich- "ardson, at the time his agent paid the Dickson notes, had no "lien upon Block 2, or any other portion of Traver's subdivis- "ion. At that time he was no subsequent mortgagee to the "Dickson incumbrance. The record shows that the trust deed "securing the payment of the Richardson notes on Block 2 was "released by Hammond, the trustee, on January 15, 1875, while "the taking up of the Dickson notes and release of the trust deed "securing them, as to Block 2, did not take place until January "29, some fourteen days later," and he says, (p. 78,) that Rich-

ardson, " loses the position of a junior incumbrancer the " moment his notes are paid and his trust deed on Block 2 " is released," and " that moment he becomes a stranger, and " has no right to be subrogated to the Dickson notes by " paying them." After further argument, he continues, (p. 79:) " Hence the time when the Dickson notes were reduc- " ed to $10,000, was long after January 15 and 28, when the " Richardson notes *were fully paid and satisfied.*"

What reply can be made to this kind of discussion? Any attempt to answer it would seem superfluous—mere " waste- " ful and ridiculous excess."

Henry Traver is made by his counsel to pose before the Court as a most meritorious person and an injured innocent. Shown to be a reckless speculator, convicted on his own evidence of taking part in a nefarious imposition and fraud, his counsel would yet have him to masquerade before the Court as an honest farmer, living in Wheaton, (a suburb of Chicago.) He, in his testimony, claims only to be " a farmer at present," but we need not be told what his avocation was. How he farmed Traver's subdivision is sufficiently shown by the evidence.

The whole evidence presents Henry Traver, in no favorable light. He enters upon this speculation in connection with his brother, both together paying one-tenth of the consideration for which they bought the property. The two then proceeded on the plan of selling out a part of the land to pay for the whole, expecting to keep what should be left as a profit. It does not appear by the evidence that either had any resources outside of the land. Henry has even defaulted in the payment of $400 of the taxes on Block 1, since the bill of foreclosure was filed, which we have been obliged to pay, (record p. 98). Their plan of operations is detailed by Michael. They designed to sell block 2 and 3 in parcels, getting a little money or some kind of truck, and taking the balance in mortgages—" purchase money paper," which they would sell, if they could find anybody to buy it. They expected to get releases from Dickson, so as to make

these mortgages first liens. They evidently expected to get them before paying any money. Not succeeding in finding enough purchasers of lots, they formed, what counsel for appellee would call a "deliberate, fraudulent conspiracy," with Earl, and manufactured a piece of "purchase-money paper." Michael says they intended to pay Dickson in that way, and if he could not obtain the whole amount "he should have "attempted to raise as much as he could to pay Dickson," (record p. 117). But Dickson would not release in parcels, at least not without having the money down, and Michael couldn't get the money on the securities without the releases, so the whole business was stalled and likely to fall through.

The agreement, as detailed by them, for the partition of the land, was a very strange bargain, considering the relative value of the three blocks. The witnesses say that Block 1 was by far the most valuable of the three, and nearly if not quite equal in value to the other two. Henry and Michael were tenants in common of equal shares in the whole subdivision, and jointly responsible on the notes and mortgage to Dickson. Under their agreement, Henry was to take Michael's interest in Block 1 and in 8 lots of Block 3, and Michael was to take Henry's interest in Block 2 and the remainder of Block 3. According to the evidence, that part of the land which Henry took was about the same in value as that taken by Michael. The "securities" they had taken were of very little account. They were certainly of no value to the Travers.

Now on this apparently very even division of the land, Michael gave Henry the enormous odds of an agreement to pay all the remaining purchase money—nine-tenths of the purchase price of the whole tract. A most extraordinary bargain. If fraud is ever to be established by inference, then the conclusion is irresistible that this bargain was only a sham and cover for Michael to retain concealed his interest in Block 1, and under the color and pretence of a legitimate trade and division with Henry, be the better able to foist the burden of paying the whole consideration, which he had thus apparently assumed, upon some other speculator, as he did,

upon Hyde; and it would be no greater piece of deception than the Travers attempted with the Earl mortgage, but very much of the same character.

Men who were capable of one were easily capable of the other, and there are grounds for a very strong suspicion that this is the true explanation of this singular transaction. For appellee to talk as he does on p. 59, about Henry, in this trade *giving* Block 2 to Michael without consideration, to pay Dickson with, exhibits a degree of assurance calculated to excite our special wonder.

Michael having unloaded the burden upon Hyde, the Travers take it for granted, and appellee assumes in his argument, that the rights and equities of no one who has had the misfortune to come within reach of the complications with which the Travers surrounded themselves, are worth regarding, as against the claims of Henry Traver. Though trusting Hyde to execute the whole plan they had formed for carrying out their speculation, they complain because Hammond and Bogue trusted him at all; and they seek to take Mr. Richardson's money, put into the land under a fair agreement, to fill up the measure of profit required to satisfy the greed of most unscrupulous speculators, and ask the aid of a court of equity in this unconscionable demand. That such a course cannot commend itself to this Court, is the firm conviction of appellant.

FREDERIC C. INGALLS,

of Counsel for Appellant.

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112-423

IN THE

Supreme Court of the United States,

October Term, A. D. 1884.

NO. 85.

CHARLES A. RICHARDSON,
Appellant,
vs.
HENRY J. TRAVER,
Appellee.

Consolidated with

CHARLES A. RICHARDSON, *Appellant*,
vs.
HENRY J. TRAVER, MICHAEL TRAVER AND OTHERS.

Brief and Argument for Appellee, Henry J. Traver.

McCoy, Pope & McCoy,
Counsel for Appellee.

BLACK & BEACH, Legal Printers,
170 S. CLARK ST., CHICAGO.

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Brief and Argument for Appellee, Henry J. Traver.

MAY IT PLEASE THE COURT:

Counsel for appellant has, in his brief, stated the substance of the pleadings in this case. No further recital thereof is necessary.

Counsel's statement of facts is, in our view, so completely at variance with the evidence, that we must ask the court's careful attention to a recital of what we consider to be the real condition of things, as shown by the testimony. This is, we conceive, absolutely necessary, since, in our view, the decision in this case will turn, not so much on the law, as on the evidence.

STATEMENT OF FACTS.

On the 19th day of December, A. D. 1870, Henry J. Traver and Michael Traver, his brother, purchased the tract of land, afterwards known as Traver's Subdivision, from one John Dickson. The Travers paid therefor $[illegible] in cash, and, in addition, gave their four promissory notes of equal amounts, for the aggregate sum of $21,494.70, all dated December 19, 1870, secured by trust deed upon said land, by them and their wives, to one Enos Ayers, bearing even date with said notes, and duly recorded in the recorder's office of Cook county, Illinois, May 19, 1871. These notes were payable to the order of said Dickson, in Chicago, at the office of Ayres & Eoff, respectively in two, three, four and five years from date thereof, with interest at eight per centum per annum, payable semi-annually, and if not paid at maturity, to bear interest at ten per cent. until paid. Henry J. Traver paid all the money on this purchase, and Michael, nothing.

This land was duly subdivided into three blocks, block 1 contained forty-three lots; block 2, forty-eight lots; block 3, forty-four lots.

The evidence shows that the Travers paid far less than the property was worth, or that very valuable improvements were added by them subsequent to the purchase. Hammond & Bogue, in their letter to Richardson, of December 28, 1872, (Printed Trans., 247) say that at a low valuation, block 2 alone, was worth $25,000. This would appear to be *exclusive* of improvements,

as in their letter to Richardson of December 20, 1872, they say, referring to a projected loan to Hyde, hereinafter mentioned: "Since the Boston fire, we have adopted as "our rule, to pay no attention to improvements on the land, "but to require in our securities, ample value in the *soil*. "So that a fire cannot harm the security." Again, in the same letter, they say: "We can place your money "where it will net ten per cent. interest per annum, pay- "able semi-annually, in a loan of three to five years, as "you shall prefer, secured on real estate of twice the value "of the loan *besides all improvements*."

Printed Trans., 244.

Counsel for appellant, in his examination of Ayres, (Printed Trans., 163) elicits the fact that block 1 was worth a third more than block 2, and more than block 3, and that block 2 was the least valuable of the three.

Michael Traver was a real estate agent, living in Chicago. Henry J. Traver was a farmer, and lived in Wheaton, DuPage county, Illinois. Michael acting for himself and brother Henry, *before September, 1872*, sold some of this land for money and notes.

About September 5, 1872, Henry J. Traver and Michael Traver made an oral agreement, dividing up Traver's Subdivision, being in substance that Michael Traver should convey to Henry Traver all his, Michael's, interest in and to all of block one (1), and lots 21 to 28, both inclusive, in block three aforesaid, the same to be owned solely by Henry; that Michael should pay the Dickson notes as fast as they became due, and, in pursuance of this agreement, obtain a release of the property, to be conveyed as aforesaid to Henry J. Traver, from the lien of the trust deed to Ayres; and that in consideration

of this, and some outside property, Henry J. Traver should convey to Michael the balance of the property then unsold, and all notes and moneys then received for any of said property then sold, the same to be owned by Michael.

Printed Trans., 104, 105, 113.

In pursuance of this agreement, Michael Traver and wife, on September 5, 1872, duly conveyed block 1, and lots 21 to 28, both inclusive, in block 3, to Henry J. Traver. This deed was duly recorded September 5, 1872. On December 20, 1872, the other conveyance, agreed to as above stated, was duly made by Henry J. Traver and wife, to Michael Traver, of all the land then unsold, Michael then holding all of the notes and moneys received for portions of the land then sold.

Michael, finding it difficult and inconvenient to meet the Dickson notes as they became due, made an agreement with one James C. Hyde, by which Hyde took all the assets which belonged to Michael under his contract with Henry J. Traver; and in consideration of these assets, Hyde undertook to carry out Michael's contracts with Henry.

Michael, in pursuance of his agreement with Hyde, assigned to Hyde, December 28, 1872, all the securities and notes he held for sales of lots in Traver's Subdivision, and conveyed all the land to Hyde he then held in said Traver's Subdivision.

Hyde received from Michael some $9,000 in notes, signed by one Earl, secured by trust deed on thirty lots, being lots 9 to 29 inclusive, in said block 2. These lots had

been conveyed to Earl. At the request of Hyde, Earl afterwards deeded said lots 9 to 29, both inclusive, to Hyde, and the trust deed securing the Earl notes was released, and the Earl notes canceled.

Taking these Earl lots into account, Hyde received from Michael Traver the whole of block 2 (forty-eight lots), twelve lots in block 3, and the proceeds of the balance of the lots in block 3, not including Henry J. Traver's eight lots, being some $5,000 to $6,000 in notes and contracts from purchasers of said lots.

The particular attention of the court is called to the fact, that after the making of the agreement between the Travers, Michael in no act or particular was the agent of Henry J. Traver, and that Hyde never at *any time* acted for or represented Henry J. Traver.

This point is important, as the argument of counsel for appellant is largely founded on the assertion that Hyde was the agent of both the Travers.

Indeed, on page 20 of his brief, counsel asserts that there is no dispute that Hyde, in procuring releases in parcels of Traver's Subdivision, represented *both* the Travers, and was authorized by them to so do. Counsel is utterly mistaken in supposing that any such thing is conceded, or that the proof so shows.

Again, on page 42 of his brief, counsel says: "It is "not disputed that Hyde was authorized and required to "procure releases." As put by counsel this is untrue. As the circuit judge says in his opinion (Printed Transcript, 270), "that must be understood to mean that "they (the releases) should be consistent with Henry's "interest in the property, and so as not to jeopardize his

"rights in any way." Hyde went into his contract with Michael with no arrangement whatever with Henry.

Hyde did not take Michael's place under the contract blindly, but evidently was of the opinion that he could make money by so doing, and with good reason.

Hyde, before making his agreement with Michael, according to his own story (Printed Trans., 129), went to Cincinnati, saw Dickson, and made arrangements with him, and afterwards with Hamilton, his attorney, in Chicago, by which, upon the payment of the first two notes and interest due upon the other two notes, Ayres was to release block 3.

And upon the payment of another sum of $3,000 in thirty days, block 2 was to be released.

Hyde claims he had Michael bring in Henry J. Traver, and that, in the fore part of January, 1873, he, the Travers and J. L. Lee, in Snyder & Lee's office, talked over his claimed arrangement with Dickson (subsequently changed with Hamilton, Dickson's attorney), and Michael Traver, and that at that interview both the Travers consented to this arrangement with Dickson. That it was also there agreed that Hyde should have the management of the property, managing it as he saw proper, and in the end give Henry J. Traver the eight lots in block 3, and all of block 1, and that it was then agreed that Hyde and Snyder & Lee should indorse the Dickson notes, and that all this was done before the actual making of his contract with Michael.

Printed Trans., 129, 130, 170.

Henry swears Michael never requested him to meet Hyde as claimed by Hyde. That he never was in Snyder

& Lee's office, and never had any such conversation with Hyde. That he was in Wheaton all the time this interview is alleged to have taken place. That he never had any conversation or negotiation with Hyde in presence of Michael Traver or any other person concerning the contract between Michael and Hyde, until July 2, 1873. That that was the first and only conversation with Hyde during the year.

Henry Traver swears that he never made any agreement with Hyde or any one else that block 2 might be released; never made arrangement with Michael Traver or Hyde that either of them should procure such releases as they might agree upon with Dickson; never had any conversation on this subject with Hyde, till the 2d of July, 1873.

Printed Abst., 193, 194, 195.

Michael Traver swears that Hyde never advised him that he had made any arrangement with Dickson for the release of block 2. Never heard of the release or of any arrangement for one until told by Henry, after it was made.

Never made any arrangements with Hyde or authorized him to negotiate for releases of any portion of the property as he might agree with Dickson. That he never had any arrangement with Henry authorizing him to make such arrangements. That Hyde did not request him to send for Henry to come in and ratify the arrangement, as Hyde stated. That he never heard of it till he, Hyde, stated it on the stand. That he never sent for Henry to come to Chicago, during the fore part of January, 1873. That he never was with Henry in Snyder & Lee's office, until a tax was paid, four, five, or six months

after January. That was the first time Hyde, Henry and himself had ever met. That Hyde then gave a tax receipt to Henry. This tax receipt Michael attached to his testimony. That when said tax receipt was given was the only time Henry and Michael ever had any conversation with Hyde at Snyder & Lee's office in reference to these transactions. That there was no arrangement between Hyde and Michael concerning releases as stated by him. That when Hyde was ready to pay the two first notes, he said to Michael that he must have Block 3 released. If that could be done he could manage it. That was the only release ever mentioned to him by Hyde.

Printed Abst., 195, 196, 197.

Henry J. Traver produces his letters from Michael, showing that Henry was then in Wheaton, and that all Henry's information about the arrangement with Dickson was derived from such letters, when in Wheaton. Henry swears that he never knew of any arrangements about the release of block 3 and some other lots, till after the same was made, and that he never authorized it in any way; that he was in Wheaton all the time.

The first letter from Michael to Henry is dated January 4, 1873. In it, Michael writes:

"Mr. Hyde got back this morning from Cincinnati. "He saw Mr. Dickson and has made the arrangement "with him to release a part of the lots on payment of "the note and interest now due, and pay the next note "that comes due one year, *but will not release any more* "*until all the balance is paid.* But will receive the "money at any time. Mr. Hyde says he will pay all in "three to four months and get it all released, so now as

"quick as the papers are brought down, it will be paid "off soon, $12,000."

In the same letter Michael says:

"Yours rec. yesterday with quit-claim deed."

Printed Trans., 257.

The quit-claim deed was the deed from Henry and wife to Michael, executed in Du Page county, January 3, 1873, as the acknowledgement shows, though dated on December 20, 1872.

Shown in Printed Trans., 231, 232.

The arrangement indicated by the letter of January 4, was changed. The next letter is dated January 8, 1873, and in this letter Michael speaks of receiving a letter from Henry, dated the seventh of January, 1873. Michael says further:

Printed Trans., 257, 258.

"Mr. Hyde got a telegram from Dickson not to do "anything in the Traver matter until he received a letter "from him; *this morning* the letter came to hand, but all "is right. Hyde pays this note and interest, and pays "the note that comes due next December, and Snyder "and Lee and Hyde endorsers, and agrees to pay the "other notes that still will be unpaid that Ayres requires "of them to do, and by so doing that they will release "the one block and some ten or twelve other lots, and "requires them to hold the notes of those we have sold "to, as a surety to them that there will be no trouble "hereafter in the payment of those other notes, so you "will see that our notes will be taken care of: as quick "as the abstract is brought down the money is ready, so "Hyde says.

"*I don't know as it will be necessary for you to come in.*
"But if there should anything go wrong I will write you.
"God knows I wish it was all done and off my mind, so
"I could do something else."

This letter of the 8th shows that the arrangement between Dickson and Hyde was not consummated till *at least* the 8th of January 1873, and that Henry was *not* to come to Chicago. The arrangements between Michael and Hyde, had, *days before at least*, been concluded, as is shown clearly from documentary evidence. For instance, the deed from Earl and wife to Hyde was acknowledged *January 3*, 1873, and *recorded January 7*, 1873, bearing date *December 28, 1872*.

Printed Trans., 241–2.

The deed from Michael Traver and wife to Hyde, also dated December 28, 1872, was acknowledged *January 6*, 1873, and recorded *January 7*, 1873.

Printed Trans., 238, 240.

Michael Traver places the date of his arrangement with Hyde in *December, 1872*.

Printed Trans., 113.

And the dates of the deeds from Earl to Hyde, and Michael and wife to Hyde, to wit: December 28, 1872, corroborate him.

J. L. Lee, of Snyder & Lee, being called to the stand by Richardson, could only testify that Henry J. Traver was in the office (Hyde being then Snyder & Lee's bookkeeper) once or twice, and Michael frequently, about the time that Snyder & Lee's endorsement, at Hyde's request, was put on the Dickson notes.

Printed Trans., 180.

Not a word is said by him as to Hyde, Henry and Michael Traver and said Lee's talking this arrangement all over in Snyder & Lee's office, as Hyde testifies it was talked over.

Even before Hyde perfected his arrangements with Dickson, Hyde commenced carrying out his previous arrangement with Michael. He executed to Michael two notes, one for $6,000, and one for $4,000 secured them by trust deeds to Hammond, Bogue's partner, on block 2; had Michael endorse them and on these notes procured a loan of $10,000 from Richardson, through Bogue & Hammond, stating to Bogue & Hammond that there was a prior trust deed on block 2, but that this money would be used to take this prior encumbrance up.

These notes bore date December 28, 1872, and were secured by trust deeds of even date, acknowledged January 6, 1873, and recorded January 7, 1873. The loan was made December 28, 1872, as appears from Hammond & Bogue's letter to Richardson, of that date.

Printed Trans., 223–231, 247..

All this corroborates Michael Traver as to when his arrangements were made with Hyde, viz., in December, 1872.

Bogue, in his testimony, admits he knew that there was another encumbrance on block 2, but says Hyde told him this money was to take up this encumbrance.

Printed Trans., 144.

Hammond says Hammond & Bogue learned first from Manning, in the fall of 1874, that this prior encumbrance had not been taken up.

Printed Trans., 164.

Bogue says they never knew it till January 15, 1875, and from information derived from Hyde and the abstract he then showed them.

Printed Trans., 144.

This prior trust deed by the Travers to Ayres was duly recorded in Chicago, May 19, 1871, and secured the Dickson notes.

As Hammond & Bogue were Richardson's agents, Richardson had actual notice, through Bogue, and constructive notice from the records of Cook county, Illinois, of the Ayres trust deed.

Richardson, therefore, loaned his money with full notice that his security was but a second lien.

According to Hyde's story, partly from assets in his hands, and partly from the money from Richardson, he paid the first two Dickson notes, and the interest due on the next two Dickson notes.

Printed Trans., 130.

On February 8, 1873, he procured a release of block 3 from the lien of the Dickson-Ayres trust deed.

Printed Trans., 221–222.

Henry G. Traver made no objection to this release of block 3, as his interests were not injured thereby. Two of the Dickson notes were thereby paid, and his eight lots in block 3 were cleared of all encumbrances, and block 1, owned by him, relieved of at least its fair proportionate amount of liability.

Printed Trans., 110, 111.

Hyde also made, as we have said, an arrangement, as he claims, through Hamilton, that if he, Hyde, would

pay $3,000 more in thirty days, block 2 should also be released.

Printed Trans., 130.

Hyde failed to pay this $3,000, and he does not claim he ever notified Henry Traver of such an agreement about block 2, with Hamilton.

Hyde sold some more of the lots he obtained from Michael Traver, and improved the property in various ways, by fencing, making sidewalks, planting trees, carrying city water on to the premises. He erected four two-story houses, costing $11,000, and re-purchased several lots in block 3 from persons to whom the Travers had deeded. He sold, also, several of the lots.

Printed Trans., 131.

When, however, the third Dickson note came due, December 1, 1874, Hyde could not meet it, and to save the property, was compelled to so notify Hammond & Bogue, and reported that Dickson was about to foreclose on block 2, although the testimony does not show that Dickson ever declared the second note due.

Although Hammond and Bogue knew, at the time of making the Richardson loan, of the existence of the Ayres-Dickson trust deed, and of its being a prior lien to the Hammond-Richardson trust deeds, they seem to have trusted to Hyde to pay the Dickson notes, and by letter dated December 28, 1882, falsely told Richardson that block 2 was unencumbered, and that the title had been examined by good real estate lawyers.

Printed Trans., 247.

To save their credit and reputation for veracity, and show at least decent care in their action in investments for

Richardson, was an important matter for Hammond & Bogue. Bogue was personally liable on $10,000 of paper given Richardson for a loan to Bogue, secured on property after the loan to Bogue, conveyed to one Arnold direct, and both Hammond and Bogue were liable to Richardson for the full amount of the $10,000 loaned to Hyde, for their gross carelessness in the investment thereof. To save such character, and prevent loss from any such liability, Hammond & Bogue then agreed to advance enough money to Hyde, with what Hyde could raise, to pay the Dickson notes. In order, however, for Hyde to procure funds, he had to have block 2 released from the Dickson-Ayres trust deed. Both the Dickson notes were by Mr. Dickson sent forward, January 5, 1875, "*for collection*," through the La Fayette Bank of Cincinnati, to Preston, Kean & Co., Bankers, in Chicago.

Printed Trans., 259, 260, 261.

At whose instigation does not with certainty appear, but Dickson thinks at Hyde's, as he only corresponded with him.

Printed Trans., 262, 263.

Only one of the last two notes was then, by its terms, due, and the last note had not, by the terms of the trust deed, been apparently declared due.

Printed Trans., 262, 263.

These Dickson notes were expressly and in terms endorsed, "for collection."

It appears that Hyde and Bogue & Hammond tried first to get block 2 released from the Ayres-Dickson trust deed by merely the payment of one of the remaining Dickson notes. Ayres testifies that on January 20, 1875,

he, together with Bogue and Hyde, went to the banking house, in Chicago, of Preston, Kean & Co., where the third note was shown Ayres, who was requested then by Bogue and Hyde to release block 2; Hyde stating that *he*, Hyde, did not propose to pay the note, but Bogue would pay and carry the note for him, Hyde, and that Bogue, who was then present, would sign the release deed with Ayres for block 2. Hyde said, then, to Ayres, in Bogue's presence, that he, Hyde, was the owner of block 1, Bogue hearing him, and that there was ample security in block 1 for the unpaid note.

Ayres declined to release block 2 unless the note was paid, and gave as a reason that there was another unpaid note not due, and that he would not release any more of the property as trustee, unless both of the unpaid notes, the one due and the one becoming due, were in the hands of one and the same party, and he would join him (Ayres) as the holder of the said notes in the release. Then the interview ended.

Printed Trans., 125, 126, 127.

Hyde, on cross-examination, states that he does not remember going to Preston, Kean & Co. with Ayres and Bogue. He remembers going once to Ayres, with Bogue, about the release of block 2, but puts the place as Ayres' office, and says he was not present when block 2 was released, on January 29, 1875. Ayres also says Hyde was not present January 29, 1875.

Printed Trans., 137, 125, 132.

Bogue says, on direct examination, that Hyde *was* present July 29, 1875, though on cross-examination he was not sure of it, and will not swear positively to it.

Printed Trans., 145, 155.

Bogue could not at first remember of Hyde, Ayres and himself going to Preston, Kean & Co.'s banking house, but would not then swear that they did not then go to Preston, Kean & Co.'s. Afterwards he remembered going.

Printed Trans., 155, 161 (question and answer).

As both Bogue and Hyde admit that upon *one* occasion they went *together* to Ayres, neither are able positively to deny going to Preston, Kean & Co.'s, and contradict, in details, each other, and Bogue afterwards admits going to Preston, Kean & Co. with the two others; their story of *not* going to Preston, Kean & Co.'s, in the light of Ayres' positive statement, must be taken as untrue. Especially is this so when as Bogue and Hyde both admit, Hyde did pay $6,000 on January 15, 1875, on the Dickson notes, just about enough to pay one of the Dickson notes.

Printed Trans., 159, 132.

Finding both the notes must be paid before obtaining a release to block 2, Hyde and Bogue & Hammond set to work.

According to the story of Hyde and Bogue, the following payments were made on the third and fourth Dickson notes.

January 15, 1875, Hyde paid $6,000, derived from the sale of lots 1 to 19, both inclusive, in block 2, to one Goss. When Goss paid this $6,000, Hammond released the lots sold to Goss from the lien of the Richardson trust deed, and on January 29, 1875, as will be hereafter

shown, Ayres, at Bogue and Hyde's request, released Goss' lots from the lien of the Dickson-Ayres trust deed.

Printed Trans., 132.

On January 29, 1875, the next and last payment on the Dickson notes was made, of $5,641.87. This last-mentioned payment, so Hammond & Bogue claim, was advanced by them and afterwards repaid them from money loaned Hyde by various parties, whose names Bogue is unable to state, through Hammond & Bogue, and secured on parts of block 2.

Printed Trans., 168.

No portion of this money paid on the third and fourth Dickson notes ever came from *Richardson*, but every cent of it was *Hyde's* money, either furnished by him from the sale of his own lots in block 2, or loaned to him by various parties through Hammond & Bogue, but all derived from block 2, and in reality the very means, or derived from the means, originally given Michael Traver to pay the Dickson notes.

Hammond & Bogue's books are introduced, and show that whatever money was loaned to Hyde through Hammond & Bogue was charged by them directly on their own books to Hyde, and they themselves testify that all such money so advanced by them was paid back through Hammond & Bogue by Hyde.

Printed Trans., 213, 168.

The bank officer, Carton, at Preston, Kean & Co.'s states that when Bogue made the payments at the bank on the third and fourth Dickson notes he said he, Bogue,

would carry the Dickson notes *for Mr. Hyde*, and did not wish them canceled.

Printed Trans., 210.

Hence his excuse for letting them go uncanceled.

Mr. Ingalls (of counsel for apppellant) asked Mr. Carton if Mr. Bogue did not state that he had bought or purchased the notes, but Mr Carton could not remember that Mr. Bogue had said any such thing.

Printed Trans., 211; Cross Ans. 7.

Bogue, to secure the release of block 2, joined in such release, therein describing *himself* as legal holder of the unpaid notes.

Printed Trans., 222.

Mr. Richardson never *knew* of the transaction till nearly a year afterwards.

Printed Trans., 168.

Additional convincing proof that the Richardson notes of $6,000 and $4,000, were not taken up by these payments of Hyde's in spite of Bogue's and Hyde's statements to that effect, is shown by the fact that Hyde continued to pay interest on said $6,000 and $4,000 notes at least as late as June 30, 1875, and was duly credited with $400 as paid by him on said $6,000 and $4,000 notes.

On June 30th, 1875, Hammond & Bogue wrote Richardson enclosing this $400 in payment, as they write, "of "the coupon of James C. Hyde, due the 28th inst., to "1st proximo." The only Hyde coupons were the coupons belonging to the $6,000 and $4,000 notes.

The admissions of both Bogue and Hyde supplement and confirm their testimony before mentioned, and the evidence of their own books and letters as to the nature of the transaction when the Dickson notes were paid at Preston, Kean & Co's.

Michael learned of the payment of the third and fourth Dickson notes about one to three months before April 1, 1875, but did not know of the release of block 2 from the Ayers trust deed till told by his brother Henry.

Printed Trans., 121 and 123.

About the 1st of April, 1875, Henry J. Traver discovered that block 2 had been released from the Ayers-Dickson trust deed, and told Michael. Henry went at once to Ayers; Ayers then discovered the fraud of Bogue and Hyde, related how he had been deceived by them, Hyde claiming to him that he (Hyde) owned both blocks 1 and 2, and asking that block 2 be released, and Bogue claiming to own all the notes, which he (Bogue) had presented to Ayers, stating that he (Bogue) was willing to have block 2 released. Ayers produced at this interview the plat of Traver's subdivision, showing his (Ayers) memorandum, made at the date of giving the release, to the effect that Bogue as the legal holder of said notes had joined in the release.

Printed Trans., 106, 222, 223.

Both the Travers then went to see Bogue, who did not seem disposed to talk, but said he supposed Hyde owned the entire subdivision, and also said to Henry: "You hadn't better commence suit; I will see that those "two notes are taken up soon and delivered over to you." Then turning to Michael, Bogue said: "Mike, you and

"I will manage this thing; we know Hyde better than "your brother." At the same interview, Bogue stated that *he was the owner of the two Dickson notes, and had bought them* from Dickson, Hyde not having enough of money.

Printed Trans., 107.

On the same day, Henry J. Traver saw Hyde, and asked him how he was getting along with the payments on the Lawndale property (Traver's Subdivision)? Hyde replied: "*Very well, I have got Dickson paid off.*" Henry then asked where the Dickson notes were, to which Hyde answered: "*They are here in the office, "where I can control them.*"

Printed Trans., 107.

Hyde also admitted at this interview that his agreement with Michael was that the Dickson notes should be paid as fast as they became due, but said he couldn't then deliver to Henry Traver the said notes. On this same day, Michael Traver went alone to Hyde & Bogue's office, Hyde & Bogue were then partners, to see Hyde, and found Bogue alone there. Bogue then requested Michael to keep Henry from making any trouble or filing any bill against Hyde, that he (Bogue) understood the matter very well, and that he (Bogue) was the holder himself of the two notes unpaid to Dickson, and that he (Bogue) and Michael together, knowing Hyde better than Henry, would see that those notes were paid and taken up, and block 1 released. Bogue then admitted to Michael that he was aware that block 1 belonged to Henry, and that Hyde had frequently told him of the agreement, and that Hyde had taken the property and notes to carry out the agreement between

Henry and Michael. Later in the same day, Hyde came to Michael, and wanted Michael to keep Henry from bringing suit; that he (Hyde) thought that he should, in a short time, be able to procure the release of block 1. That Bogue had the notes in the office in his possession; that he could soon have everything arranged to take them up; that Bogue and he were partners, and understood each other; that if Henry made trouble, it would injure him (Hyde) in his deals. Michael responded, that if Hyde had told him the fact of the payment of notes, that he (Michael) would have told Henry, and Henry would not then have thought Michael was linked into a fraud. Hyde replied: "*Don't get worried about "it, for we sometimes have to make pretty sharp corners.*"

Michael also testifies that about the time the third Dickson note matured, which was paid at Preston, Kean & Co.'s, he had frequent conversations about the payment of the Dickson notes; that Hyde told him he, Hyde, had paid a part of the note then due; that Bogue was arranging to pay and to take the paper up; that if he could make arrangements with Bogue they could have it in their own hands, where they could manage payment; that he, Michael, had frequent conversations to the same effect, after Bogue had produced the note. Hyde then told Michael that Bogue had advanced the money to Dickson; that they had the notes in their office, and that Michael might tell Henry that they would soon have the notes paid off.

On April 5th, 1875, about four days after Henry discovered the release of block 2 from the Ayres trust deed, he filed his bill in equity in the Circuit court of Cook county, Illinois, for relief from the fraud of Bogue, Ham-

mond and Hyde, which suit was afterwards, on the petition of Richardson, transferred to the United States Circuit court. Richardson was not a party to this bill, neither Bogue, Hammond nor Hyde, up to this time, *claiming*, even, that Richardson had any interest in the Dickson notes—not even mentioning his name. Not till Hyde filed his answer to Henry J. Traver's bill, on May 7th, 1875, was any mention made of *Richardson* owning the Dickson notes. Either on January 15, 1875, or at the time of the filing of Henry J. Traver's original bill, Hammond, and Bogue & Hyde, fearful that they would have to pay both the Richardson notes, as well as the Dickson notes, entered into a deliberate, fraudulent conspiracy, not merely to shift the burden of the lien of the Richardson notes on to block 1, but also to persuade Richardson that the purchase of the Dickson notes was made on his behalf. By this they would saddle not only what they themselves were clearly liable to pay, on to Henry J. Traver, but would also save, possibly, in Richardson's opinion, their character for veracity and care, and prevent Richardson pressing Bogue on his notes secured by the Arnold property.

They went into this conspiracy either with a deliberate intention to defraud Henry J. Traver, or because they were informed by counsel, or thought the legal effect of what they had done was to transfer the Dickson notes, up to the amount of $10,000, to Richardson, and was to substitute him to the benefit of the Dickson notes up to the amount of $10,000. December 29, 1875, Henry J. Traver filed his supplemental bill, stating what he had learned as claimed from Hyde and Bogue and Hammond's answers to his original bill.

Bogue claims that he really supposed Hyde was the

owner of block 1. This claim by Bogue is unquestionably and also thoroughly refuted. Michael Traver testifies that Bogue told him that he, Bogue, was aware that all of block 1 belonged to Henry J. Traver. That Hyde had frequently told him of the agreement. That he knew that Hyde had taken the property and notes, to carry out the agreement between Henry J. Traver and Michael Traver. Bogue denies this conversation, but admits that in a subsequent conversation he told Michael that he knew of the contract between Michael and Henry.

Josiah S. Wolfe says that in a conversation about the beginning of January, 1875, held in Bogue's office, Chicago, Bogue told him that Hyde did not own block 1, but that it was owned by Traver's brother at Wheaton.

Bogue admits, that at the time he loaned Hyde the $6,000 and $4,000 notes, he had abstracts of the property. That he took Hyde's word; that the title was as Hyde stated, though he had no absolute knowledge that Hyde owned the property. He tells the improbable story that at the time when Hyde came to him, admitting he had lied to him, and that the Ayres-Dickson trust deed was not released as Bogue claims he thought it was, that he, Bogue, again took Hyde's word, and though again at the time he had the abstract of Traver's subdivision, he merely looked at it to see that the Ayres-Dickson trust deed was not released, but never looked to see who owned block 1. The conveyance to Henry J. Traver was shown on the abstract, and but two or three conveyances off from the trust deed to Ayres. It was probably at the time of the payment of the last two Dickson notes the intention of Hammond and Bogue and

Hyde to realize enough from the sale of lots in blocks 2 and 3 to pay up the Richardson loan, and to keep from Richardson any knowledge of the release of block 2 from the Richardson-Ayres trust deed, and the consequent loss to Richardson of his security.

Between the dates of January 15, 1875, and March 23, 1875, Hammond had released thirty-eight lots, being all of block 2, except lots 20 to 29. Hyde had sold all of block 3, and all of block 2, except twenty lots. Of these lots, twenty lots had been deeded to Hammond, to secure loans to Hyde, made through Hammond & Bogue, of $5,600. The remaining lots were mortgaged to secure, first, $2,000 to Dederick, a judgment creditor of Hyde's; and, second, to secure to Hammond $1,500.

Printed Trans., 243.

The panic of 1873 was now at its height. The claim made by Hammond & Bogue and Hyde, that the payment made at the banking house of Preston, Kean & Co. was a purchase, as will be shown hereafter in our argument, was probably an after-thought, when Hammond & Bogue and Hyde's assets were exhausted, and not enough had been sold to pay Richardson. The worst of the panic of 1873 was on the country and real estate market. The truth could no longer be concealed from Richardson, that not only were the statements of Hammond & Bogue willfully false, but that Hammond had, by his releases, parted with even the secondary security Richardson had, and that Traver had commenced suit.

Richardson had, in 1872, as has been said, loaned Bogue, personally, $10,000. This loan had been evidenced by notes of Bogue, secured by trust deed on property afterwards sold to one Arnold. Arnold could

not, or would not, pay this money at the maturity of the loan, in December, 1875.

The property had largely depreciated in value, and Bogue was liable on the notes.

September 29, 1875, anticipating that his two loans, aggregating $20,000, would soon be due, Richardson wrote, to say that he was willing to allow half ($10,000) to remain another three years, but that he must have sound security.

Hammond & Bogue made no reply. They are not yet sure of what Arnold will do.

December 4, 1875, Richardson again writes, stating that he has not heard from them, and wishes an answer.

December 8, 1875, Hammond & Bogue write, acknowledging Richardson's letter of the 4th of December, 1875, stating that, until within a few days, they expected that Arnold would have paid promptly the Bogue notes; that he cannot, but promises to pay in installments, stretching over five months.

In April, 1876, Hammond & Bogue write that Arnold had not yet paid all, and could pay no more till at least October, 1876, if then.

Later on, in their letter of December 8, 1875, they say:

"With regard to the Traver loan, we have to say, "from present appearances we do not think there is a "prospect of any payment being made at present. But "we are of opinion it will be for your interest to institute "prompt proceedings to foreclose, if nothing is paid.

"*The security on this loan was modified by us from the "original, taken as follows: At the time of negotiating*

"*for the loan there was existing a prior purchase money*
"*security, of the same character as that taken by us. Our*
"*first arrangement at the time of the negotiation of the*
"*loan, was to have this original encumbrance released, in*
"*order that your loan should be a first lien, and instead of*
"*the release we had* the original security (being the pur-
"chase money secured by deed of trust) transferred to us
"for your account, in substitution of the security first
"taken, and which we hold for your security as a first
"and prior lien, and we think it advisable, *in case no*
"*payment is made this month, when the payment is due*
"*(Dec. 19), that proceedings for foreclosure in the United*
"*States Court should be commenced immediately. We are*
"*legally advised and believe that this course will result in*
"*producing an early settlement, but if not, it will be a*
"*speedy proceeding by which a final result may be reached*
"*much sooner than is the case in the other courts. We*
"*would like you to advise and direct us in regard to im-*
"*mediate proceedings to foreclose, as we may deem*
"*necessary for our interest. An early reply is important.*
"*Send all papers of both loans.*"

Not a word here is said of the Traver suit, commenced months before, nor of the injunction against the sale of block 1, nor of the release of almost all of block 2, from the Hammond trust deed. The notes for $6,000 and $4,000 are still in Richardson's hands, he still believing them unpaid, and they had not been delivered up, either to the Travers or Hyde, when Bogue, Hammond and Hyde were examined in March, 1878. They were still in Hammond's possession, as late as January 12, 1876. Richardson wrote to Hammond & Bogue:

"Please give me what light you can as to the six and

"four thousand dollar notes. In case nothing can be "expected but the property, how am I likely to come "out?"

Yet, Richardson claims they were paid in January, 1875. What security was to be foreclosed? It would be hard to tell, as there was an injunction against the sale of block 1; almost every lot in block 2 had been released from both the Hammond and Ayres trust deeds and sold by the direct act and connivance of these faithful agents of Richardson.

On December 13, 1875, Hammond & Bogue acknowledge the receipt from Richardson of the $6,000 and $4,000 notes, and the two last coupons thereof, all due December 28, 1875; also, trust deeds securing same.

These are the facts, which we think conclusive, and justified the decree entered by the circuit judge in favor of Henry J. Traver.

ARGUMENT AND BRIEF.

Appellee, Henry J. Traver, claims that the Dickson notes are paid by Hyde through Hammond and Bogue, and that block one (1), owned by him, should be released from the lien of the Ayers trust deed securing the Dickson notes.

Appellant Richardson denies that the last two Dickson notes are paid, and claims that the Ayres trust deed should be foreclosed, and block one (1) sold to pay the same.

Said appellee, moreover, claims that not only are the Dickson notes paid by Hyde, through Hammond & Bogue, but that Hammond & Bogue entered into a fraudulent conspiracy with Hyde, to falsely claim that the Dickson notes had not been *paid*, but *purchased* for *Richardson*. That, as a part of such conspiracy, block 2 was released from the Ayres trust deed, so as to throw the burden of paying the Dickson notes off block 2, owned by Hyde, on to block 1, owned by Henry J. Traver. That, as a part of such conspiracy, Hyde was to and did claim he had full authority from Henry J. Traver to consent to such release of block 2, although Hyde's contract with Michael Traver was to pay said Dickson notes and procure a release of block 1 from the Ayres trust deed. Appellee claims that Hyde had no authority to consent to such release, and was never authorized to act for Henry J. Traver; that appellee had full notice of Hyde's contract; that the release was a

fraud upon Traver, and as the Dickson notes are paid, block 1 should be declared free from the lien of the Dickson-Ayres trust deed.

Appellant denies the existence of the conspiracy, and knowledge of Henry J. Traver's rights or contract of Hyde: admits the release of block 2 from the lien of Ayre's trust deed; claims Hyde had full authority to consent to such release; denies, as we have said, the payment of the Dickson notes, and asserts their purchase by Richardson, and claims that block 1 should not be released from the lien of the Ayres trust deed.

Much of the evidence of the witnesses is flatly contradictory, and it is necessary to carefully analyze the same, and with much care consider the documentary testimony and surrounding circumstances.

For such analysis and consideration the subject naturally divides into two heads.

First. Were or were not the last two Dickson notes paid at Preston, Kean & Co.'s banking house?

Second. Did or did not such a conspiracy exist?

If the first question be answered in the affirmative, appellant must fail in his appeal and the decree be affirmed. It would then be immaterial as to whether any conspiracy existed or not, and under what circumstances these notes were paid.

The second question comes up incidentally in some degree, for discussion, in considering the first question, but its full consideration, to more clearly understand the case, should come up afterward.

I.

WERE OR WERE NOT THE LAST TWO DICKSON NOTES PAID AT PRESTON, KEAN & CO.'S BANKING HOUSE.

We have no hesitation in saying that the evidence shows *conclusively* that they were; *the payments of $6,000 and $5,641.87 were made on the 15th and 28th days of January, 1875, with no reference whatever to Richardson, but were made with Hyde's money, and on his account, said moneys being derived from sales of lots in block 2.* Both Hyde and Bogue strive in their direct examination to convey the idea that Hyde first paid the Richardson paper in full and enough on the Dickson paper to reduce it to $10,000, and then went to Bogue & Hammond and told them the real peril in which Richardson's security was, and that then and afterwards Bogue & Hammond went and with Richardson's money, which they had on hand, purchased up the Dickson paper.

Printed Trans., 132; Ans., 16, 144; Ans., 14-16.

Rigid cross-examination, however, develops a very different state of facts.

From this cross-examination it appears that Hyde procured from Goss, for the sale of lots in block 2, $6,000 in cash. This money he handed to Hammond & Bogue.

Printed Trans., 142; Cross-ans., 100.

Bogue took this very money to Preston, Kean & Co.'s, and paid the same on the Dickson notes, January 15, 1875.

Printed Trans., 154: Cross-ans., 70 to 78, both inclusive.

The balance of the money paid on the Dickson notes, being $5,641.87, was also paid by Mr. Bogue, at Preston, Kean & Co.'s office, on the 28th day of January, 1875.

Hammond & Bogue advanced part of this last sum, and part of it came from money loaned through Hammond & Bogue, from various parties who had their loans secured on lots in block 2. Whatever money Hammond & Bogue advanced was repaid them by Hyde, from money derived from loans on block 2, made from other parties, through Hammond & Bogue.

Printed Trans., 154: Cross-ans. 79 to Cross-ans. 83, both inclusive, 168; Cross-ans. 34 to Cross-ans. 37, both inclusive.

It thus appears, from the testimony of Richardson's own witnesses, that not one cent of this $11,641.87 ever was in Richardson's hands.

Bogue admits Richardson had no money with Hammond & Bogue at that time.

Printed Trans., 154: Cross ans. 71.

It can not, in the face of this evidence, be claimed that Richardson first supplied the money paid on the Dickson notes.

Whose money was it that was paid out on the Dickson notes, and on whose account was it paid?

Appellant would have the court believe it was Rich-

ardson's money. If so, having been originally Hyde's money, it could only have become Richardson's by payment to Richardson, through Hammond & Bogue, and (as it is admitted Bogue paid it at the bank) by payments on the Dickson notes, as Richardson's money, by Bogue.

If it was Richardson's money it is patent it would have been paid at the bank as Richardson's money, by Bogue, Richardson's own agent. It would not be paid as Hyde's money, or on his account.

If the money was paid as Richardson's money, after payment, the Dickson notes would; on appellant's theory, be claimed as Richardson's notes.

How was this money paid on the Dickson notes, and who, after such payment, claimed to be the owner of said notes?

The *plan* was that Bogue should assist *Hyde* in paying these notes.

Hyde told Michael Traver, in frequent conversations, when the third Dickson note became due, or was about due, that Bogue was arranging to take up the paper. If he, Hyde, could effect his arrangements with Mr. Bogue, that then they would have it in their own hands, where he could manage the payment in a short time.

Hyde told Ayres in Bogue's presence and hearing, at Preston, Kean & Co.'s, about January 10, 1875, when Bogue & Hyde tried the first time to get block 2 released, that he, Hyde, did not propose to pay the Dickson note, but that he proposed to have *Bogue* carry the note for *him*, *Hyde*, and Bogue then assented to carrying the note.

Printed Trans., 125; Ans., 12, 127; Cross-ans., 1.

In the early part of 1875, Hyde told Michael Traver that he, *Hyde*, had paid a part of the third note. After Bogue had *procured* the Dickson notes, Hyde told Michael Traver that *Bogue* had advanced the money to Dickson; that they, Bogue and Hyde, had the Dickson notes there in the office, and that Michael might tell Henry that they would soon have the notes paid off.

Printed Trans., 116; Ans., 16.

Mr. Carton, the bank officer to whom the money was paid, says:

"My recollection is that he, Bogue, said *he* would "carry these notes for *Mr. Hyde*, and did not wish them "canceled."

Printed Trans., 210; Ans., 13, 15.

Hyde told Henry J. Traver, about the 1st of April, 1875, that *he*, Hyde, was getting along very well with the payments on the Lawndale (Traver's sub. div.) property; that *he had got Dickson paid off. That the Dickson notes were in the office where he could control them;* that he had borrowed $10,000 from *Bogue*, and had turned over to him the two last Dickson notes, as collateral.

Printed Abst., 107; Ans., 21.

On January 29, 1875, Bogue stated to Ayres that he (Bogue) *was the owner of the Dickson notes.*

Printed Trans., 126; Ans. 15.

Bogue himself admits that he said to Ayres, that in a business point he (Bogue) owned the Dickson notes. That he considered himself the legal holder of the notes.

Printed Trans., 156; Ans. 108.

About April 1, 1875, Bogue told Henry J. Traver, in Michael Traver's presence, that *he* (*Bogue*) was the owner of the third and fourth Dickson notes. That he

had bought them from Dickson, and that he was holding them as collateral to Hyde's note, and would see the Dickson notes were paid.

Printed Trans., 115: Ans. 13.

An hour or two later, on the same day, Bogue again told Michael Traver (Henry not being present) that he (*Bogue*) was the owner of the third and fourth Dickson notes.

Printed Trans., 115: Ans. 14.

Bogue joined in a release deed of block 2 with Ayres, to Henry J. and Michael Traver and their wives, which was acknowledged by him before a notary, January 29, 1875. In this deed Bogue described himself as the legal holder of the unpaid Dickson notes, being the third and fourth of the series.

Printed Trans., 222–223.

Bogue admits that at that time Ayres, to use Bogue's own words, "requested me to sign the release deed, *as "the legal owner of the notes, which I did.*"

Printed Trans., 145: Ans. 24.

This evidence, when summed up is, that the plan by which Hammond and Bogue were to aid Hyde to pay the Dickson notes was to advance money to Hyde. This was told, before carrying the same into effect, to two persons, by Hyde, viz., Michael Traver and Ayres. When such plan was partially carried into effect, Hyde told Michael of such progress, viz., that he had paid a part of the third Dickson note. At the time of its being carried into effect, Bogue told Carton the manner in which it was being carried out, viz., that he was paying the money for Hyde.

When the plan had been carried out, Bogue told three persons, viz., Ayres, Henry J. Traver and Michael Traver, respecting the statement (in Michael's presence twice) that he (*Bogue*) was the owner of the notes, explaining to Michael Traver that he held it as collateral for money advanced for Hyde on Hyde's note, and Hyde told Michael and Henry, each upon a different occasion, that Bogue had advanced the money for him (Hyde), and that the notes were in Bogue & Hyde's office, as collateral. Lastly, Bogue puts himself on record by a sealed instrument as owning these two Dickson notes, admitting that he signed as legal owner of the notes and considered he was the legal holder of said notes. But we are not left to the admission and statements of Hyde and Bogue to others. The books of Hammond & Bogue are introduced in evidence. Hammond, under oath, admits that every cent of this second payment on the Dickson notes, of $5,641.87, was charged on these books against James C. Hyde.

Printed Trans., 213.

And no where does it appear that this amount was credited on the Richardson-Hyde notes. In these admissions, corroborated by Hammond & Bogue's own books, and Bogue's release deed, executed with Ayres, the payment of these Dickson notes is set forth as appellee claims they were paid. Not a whisper is yet heard as to Richardson's having any connection with the payment of these Dickson notes. True it is, that both Hyde and Bogue deny making such admissions, and after suit commenced by Henry Traver, tell a different tale, but the court will remember that these statements were made, not only to the Travers, but to Ayres and Carton, and that they were

made at the time of the payment, and are a part of *res gestæ*, and were made before suit brought by Henry J. Traver. Admissions before suit brought by Henry J. Traver, and before Richardson had called in ten thousand of the twenty thousand dollars loaned by him; before Richardson had become acquainted with the carelessness of Hammond & Bogue; before there was any strong *motive* for denying facts, are entitled to more weight than mere denials of such an existing state of facts, made in their own interest, after suit brought; after Richardson was hounding Bogue for the payment of the $10,000 loaned him, and when Bogue, by all means in his power, was trying to persuade Richardson that he and Hammond were not to blame in loaning as they did to Hyde.

Both Hyde and Bogue were anxious to prevent any bill being filed by Henry Traver. Bogue stated to Henry Traver, in Michael's presence, "You hadn't better com-"mence suit. I will see that these two notes are taken up "soon, and delivered over to you;" then, turning to Michael, he said: "Mike, you and I will manage this thing; "we know Hyde better than your brother" (Printed Trans., 107; Ans. 21). Hyde came to Michael Traver—wanted him to keep Henry from bringing suit, telling Michael not to get worried about the fraud on Henry, "for we sometimes have to make some pretty sharp corners."

Printed Trans., 115, 116; Ans. 15.

Bogue again, at a private interview with Michael, requested him to keep Henry from filing a bill against Hyde, or making any trouble, stating that he understood the matter very well; that he, Bogue, was the holder, himself, of the two Dickson notes, Mr. Hyde being

then with him; that he and Michael would see that those notes were taken up and paid and a release obtained of block 1.

Printed Trans., 115; Ans. 14.

It is particularly noticeable that these admissions and statements, made before suit brought, are in direct opposition to the examination of Bogue and Hyde, in chief; but the facts elicited by rigid cross-examination, as recited in our argument, the statements on the books of Hammond & Bogue, and Bogue's admissions, by deed and statements on cross-examination, that he signed as owner of the notes, are in perfect conformity and consonance with such admissions and statements before suit brought. Such evidence, drawn out by cross-examination, is in entire accordance with the theory of Henry J. Traver's bill. If moneys *had* been advanced by Hammond & Bogue to Hyde, the same would have been charged on their books. If Bogue himself *had* held the Dickson notes for Hyde, either as paid or collateral to moneys loaned Hyde, Bogue would have joined, just as he did in the release, as legal owner and holder of such notes. Had Hammond & Bogue loaned money to Hyde to pay the Dickson notes, and paid the same for Hyde, just such statements would have been made to Carton, Ayres and the Travers as were before suit made relating to payment, and for whom such payment was made.

The testimony of Hyde and Bogue, on cross-examination, is entirely at variance with appellant's theory of the case, viz., that the Dickson notes were not paid, but purchased. In some particulars, such testimony is flatly contradictory.

Hyde says Hammond & Bogue had money of Richardson's on hand to pay the Dickson notes.

Printed Trans., 132.

Bogue says they did not have money of Richardson's on hand.

Printed Trans., 154: Cross-ans., 71.

Hyde, to fit his theory of the case, says he paid, January 15, 1875, the Richardson notes, and enough on the Dickson notes to reduce them to $10,000 (Printed Trans., 132: Ans., 16), and *afterwards* Hammond & Bogue purchased the reduced Dickson notes for $10,000.

Hammond & Bogue say the payments were in two sums: one of $6,000, on January 15, 1875, and one of $5,641.87, on January 28, 1875, and made in each case by Bogue, though with Hyde's money.

Bogue does not pretend, as Hyde does, that the Richardson notes were paid first, and *afterwards* that the purchase was made by him for Richardson. All Bogue claims is a payment by substitution, and that he considered them paid. He swears, virtually, to a legal conclusion, either his own or that of his counsel.

Printed Trans., 149: Cross-ans., 18 to 26, both inclusive.

Hammond says the Richardson notes were exchanged for the Dickson notes.

Printed Trans., 164: Ans., 8.

It is absolutely essential to appellant's theory of the case, viz., that the Dickson notes were purchased, not paid, to show that the Richardson notes were paid.

It was only through payment of the Richardson notes

that money could come into Hammond & Bogue's hands from Hyde, to purchase the Dickson notes.

Hammond & Bogue admit they had none of Richardson's money on hand, and it is proven by appellant's own witnesses that every cent of money paid on the last two Dickson notes came from Hyde, $6,000 from Goss, the balance, partly from Hyde and partly from Hammond & Bogue, who loaned the same to Hyde, charging him with it, and the same being finally repaid by him.

Hyde owed Richardson nothing, except his, Hyde's, notes, then in Richardson's hands.

Certainly appellant cannot claim that Hyde would buy the Dickson notes up for Richardson, hand over the same to Richardson or his agents, and with his, Hyde's, guaranty on them, and still leave his own notes, constituting what are called the Richardson notes, in Richardson's hands, unpaid.

Such a course would *give* Richardson $10,000, besides leaving in Richardson's hands $20,000 of paper, on which Hyde was liable.

Now, to enable the $11,641.87 paid by Hyde to go to Richardson, and then paid out on Richardson's account for the Dickson notes, a corresponding consideration must come from Richardson to Hyde.

It is well at this point to call the court's attention to the fact that so far as Richardson's owning the Dickson notes is concerned, it will not do to claim that these Dickson notes were taken either as collateral to any loan to Hyde by Bogue, or as collateral security to the loan by Richardson to Hyde. If collateral to Bogue's loan to Hyde, they were paid when, as Hammond testifies, Hyde

repaid Bogue every cent loaned. If collateral to the Richardson-Hyde notes, then the difficulty is at once encountered of a want of consideration from Richardson.

This supposition, that the Richardson notes were paid, is in direct contradiction to facts testified to by them.

It is admitted that the Richardson notes were in Boston, and continued there for nearly a year after the payment on the third and fourth Dickson notes. That Richardson knew nothing about the payment till nearly a year after it is alleged to have taken place, and not till suit brought by Henry Traver, and some two months after answers had been filed to Traver's bill, and not, moreover, till Richardson had, by calling in $10,000 of his $20,000 loan, made it impossible longer to conceal the facts. Bogue and Hyde admit the Richardson notes have never been canceled or given up to Hyde (Printed Trans., 149, 138.), showing that they, as well as Richardson, did not understand they were paid.

The proper place for the notes, if paid, was in Hyde's hands, the maker thereof. Hammond, in his cross examination, about *March 6, 1878*, swears that these Richardson notes were still in Hammond & Bogue's hands. He attempts to account for this by saying that they were retained because of the injunction in the case. When reminded that, according to his story, they were paid some six weeks before suit was brought, he then says Hammond & Bogue kept them because they were never called for, as he could remember.

Printed Trans., 166, 167; and Cross Ans. 16 to 25.

Hyde, on his cross examination, seeks, first, apparently, to give the impression that the notes were in his (Hyde's) hands, but were at the request of Mr. Ingalls, placed in Ingalls' hands. When asked if they were under his control, he says he *presumes* so. When asked to produce them, he gives as an excuse that he hasn't got them. When further asked:

"If they are under your control, can't you produce them?" he answers:

"I can go and ask for them, I suppose."

Finally, the question is put to him:

"Well, I ask you to produce them on this trial. Will you do so?"

He answers: "I guess so."

Printed Trans., 138, 139.

All these are most singular circumstances, and most singular conversation, if these Richardson notes were paid.

What, however, is a most remarkable thing, if these Richardson notes were paid (as Hammond & Bogue both say), is, that Hyde, in his bankruptcy schedules, swears, June 13, 1877, over two years after this alleged payment, that he was still indebted to Richardson on the $6,000 and $4,000 notes signed by Hyde, payable to Michael Traver, and indorsed over by Traver to Richardson.

When asked about scheduling this indebtedness, Hyde first denied he had done so, and said he was as certain of it as of anything else.

Printed Trans., 172, near top.

When he admitted it (Printed Trans., middle page, 177), confronted with his schedules, and when asked why he swore that this indebtedness was still extant, he answers, "*I don't know.*"

Printed Trans., top page 173.

When shown, on the next page of his schedule, that he had filed another indebtedness for $10,000 to Richardson on the last two Dickson notes, and asked why he filed both, if one was paid, he said that he did not know which he should be held accountable for.

Printed Trans., 173.

On re-direct and re-cross examination, in attempting to explain why he had filed both the Richardson and Dickson notes as an absolute indebtedness, and that it was, as he expressed it, "done more by attorney's advice "than otherwise," he only makes a bad matter worse. His explanation, as there stated, was that he made out in *December, 1876*, a list of his absolute indebtedness, to January 1, 1877, and showed it to his attorneys, Gardner & Schuyler, he then being in financial trouble, and that this list Gardner & Schuyler did not change, as it was undecided which the Dickson or Richardson-Hyde notes the $10,000 should be credited on. If in *eighteen hundred and seventy-five* the Richardson-Hyde notes were paid, why Hyde should, in a list of his absolute indebtedness, claim them as still unpaid in *December, eighteen hundred and seventy-six*, is a point Hyde does not explain. While Hyde claims that this list of *eighteen hundred and seventy-six* was taken from a list made before January, *eighteen hundred and seventy-five*, he does not claim that by *accident* the Richardson-Hyde notes were copied on the list of eighteen hundred and seventy-six. Hyde

leaves us equally in the dark as to why his attorney should advise him to file, or why Hyde should himself file, sets of notes as absolutely unpaid, when, according to his own story, *one* of them at least was paid. The explanation which, at *last* (after saying that he could not explain it) he pretends to give, viz., that he did not know which set of notes he might be liable on, might *possibly* be claimed as plausible if he had scheduled one of them or both of them as a *contingent* and *possible* liability. No such explanation will account for both being filed as *absolute liabilities*.

He scheduled them as absolute liabilities, not as possible liabilities, as claimed by counsel for appellant on page 22 of his brief.

The attempt to show that the list from which the bankruptcy schedules were prepared was made in 1875 (Printed Trans., 179), was rendered abortive by Hyde saying (Printed Trans., 179): "Well, the only list that "I ever made out, expecting to ever use for bankrnptcy "or to answer threatenings or creditors' bills, was the "one prepared in 1876."

The most convincing proof, however, that the story is false is found in the fact that the Richardson loan was kept in force, and at least as late as June 30, 1875 (the claimed payment was made on 15th February, 1875), when Hyde paid $400 interest, which was sent to Richardson June 30, 1875, with the following note:

"JUNE 30, 1875.

"*C. A. Richardson, Esq., Boston, Mass.:*

"DEAR SIR,—Enclosed find draft to your order for "400 ($400) dollars in paymt. of the coupon of James C. "Hyde, due the 28th inst., to 1st prox.

"Yours truly, HAMMOND & BOGUE."

It cannot be denied that this refers to the Richardson loan. Hyde, in that loan, had signed coupon notes, but had not in the Dickson loan.

Hammond, when questioned on this matter, does not pretend to explain it or to answer the question propounded by counsel, viz., "On what account or note did this semi-"annual interest arise?" except by saying "that he did not "know whether it was to be applied on the Hyde notes or "the notes that had been substituted for them, and did not "enquire, and this is all the answer I can make to the "question."

Printed Trans., 212.

The question was several times put and several times evaded, before even this answer was obtained. If the Hyde notes (Richardson paper) were paid, why continue paying coupons on them then? If these Hyde notes were paid, why did not Hammond know on what note this interest was applied?

These Richardson or Hyde notes were kept in Richardson's hands, till December 10, 1875 (Printed Trans., 256, letter), a date between the date December 8, 1875, at which Hammond & Bogue pretend they made known to Richardson this alleged purchase on his account of the Dickson paper, and asked Richardson to send them the Hyde notes (Printed Trans., 254, end of letter), December 13, 1875, the date of the letter in which they acknowledge their receipt (Printed Trans., 253, 254). When these notes were returned to Hammond & Bogue by Richardson they were endorsed to Hammond & Bogue, for Hammond & Bogue, as Hammond swears, (Printed Trans., 166; Ans. 16) to take care of them, as Richardson's agents.

That Richardson never intended to give these Hyde notes up or understood they were paid, is perfectly evident from various things.

First and foremost, Richardson swears that the principal of said notes had never been paid when he forwarded them to Hammond & Bogue, on December 10, 1875. (Printed Trans., 205.) In the letter of December 8, 1875 (pp. 253, 254), Hammond & Bogue tell Richardson that they had intended to have a first lien taken up, evidently referring to the promise by Hyde when the loan was made him to take up and cancel the Dickson paper, but, instead of doing so, they have had this first lien, or mortgage, transferred (in lieu of releasing it) to Richardson's account, as a security. That this was to be a substitute security, in place of releasing the mortgage. The effect of such an arrangement, as claimed by them, would be that Richardson would hold the Dickson notes unpaid. That Richardson so understood the letter is not merely shown by his sworn testimony before recited, but also from his letter of June 12, 1876 (misprinted 1875), (printed Trans., 250,) in which Richardson writes, inquiring for light as to the $6,000 and $4,000 notes.

On February 2, 1876, he writes asking about the endorsements on the Hyde notes, and if the endorsers cannot be held liable, evidently thinking the notes are still unpaid. He must refer to the Hyde notes, and not the Dickson paper, as the correspondence and testimony show that no description of the Dickson paper had been given him. On January 1, 1876 (Printed Trans., 248), Richardson again writes, saying he infers "that you "have been obliged to commence process by which to get "possession of some of the securities on my notes." He,

by this letter, shows that he supposes that the Hyde notes which he speaks of as his paper, are still in force, and that whatever security has been taken is simply collateral to the Hyde notes. Appellant's counsel seek to evade the force of these letters and testimony by asking a number of most absurdly leading questions as to Hammond & Bogue's authority, and his (Richardson's) acquiescence in all that Hammond & Bogue have done. The substance of such questions and answers by appellant's counsel is, that Hammond & Bogue had general authority to protect Richardson's interests—this any man loaning money through an agent would swear to—and that Hammond and Bogue were, as he construed his relations with them, authorized to do what he understood, from their letters, they had done. He never, though, from his own testimony, understood that the Hyde notes were paid. Richardson, also, distinctly says he never authorized Hammond & Bogue to collect the money on the Hyde notes, and reinvest it in other securities.

Printed Trans., 208.

Nor can he give any time or place where he authorized the exchange of the Hyde notes for others — all he can say is, that he has given such general directions as he thinks authorized such exchange. That he never did, is plain from his own evidence, where he swears they are still in force, and from the fact that he never knew of any such exchange.

If these Dickson notes were purchased by the money received from Hyde by Hammond & Bogue, as appellant claims, then when this same money was paid on the Dickson notes, it was advanced by Richardson, or on his account, and Hammond & Bogue's books *ought*

to show both the reception of the money by Hammond & Bogue, as a credit to Richardson, and when paid out as claimed, it should be charged against Richardson. Nothing like this is shown.

Richardson Acct., Printed Trans., 257.

The loan account with Hyde and Richardson should show a credit to Hyde. We are told by Hammond that the $6,000 did not even pass through Hammond & Bogue's books.

Printed Trans., 168.

As for the $5,641.87, which it is claimed was advanced by Hammond & Bogue on Mr. Richardson's account, to purchase the Dickson notes, as Bogue swears (Printed Trans., 154; Cross Ans., 71), instead of being charged to Richardson, as it should be, it was charged directly to Hyde, and Hyde afterwards repaid it (Printed Trans., 213; Ans. 5), and Richardson, as we have said, never heard or knew anything about it for nearly a year after the transaction.

Printed Trans., 168; Cross Ans. 32, and p. 253.

Richardson didn't understand the transaction as Hammond & Bogue and Hyde did, as late as October 5, 1875.

Printed Trans., 204, 205.

It seems very plain to us, from these books and other testimony, that this $6,000 was Hyde's, never Richardson's, and had nothing to do with the Richardson loan. That all that Bogue had to do with it, was to carry it over to Preston, Kean & Co.'s, and see that it was

actually paid on the Dickson notes, and being Hyde's own money, having no connection with the Hyde notes, it never passed through Hammond & Bogue's books.

To obtain this money, Hammond had to release some nineteen lots from the lien of the Hammond trust deed, with the further agreement that the Dickson notes should be paid and these nineteen lots released from the Ayres trust deed.

As the security of the Richardson-Hyde notes was to be diminished by the amount of the nineteen lots sold to Goss, it was but reasonable to suppose that Bogue wished with his own eyes to see this $6,000, the proceeds of the nineteen lots, applied in payment of the Dickson notes. While the security of the nineteen lots was lost, under the Hammond trust deed, by release of the prior indebtedness and lien under the Ayres trust deed, was diminished by the amount of the proceeds of the Goss lots, no actual loss of the security was experienced. While there was a loss on the one hand, there was a corresponding and equal gain on the other. Hyde was not to be trusted. He had lied to Hammond & Bogue once, in regard to the payment of money loaned him, and as a very natural consequence Bogue was determined to see, in person, that not only the $6,000, but the $5,641.87, was applied in paying the lien prior to that of the Hammond trust deed. Hence, Bogue's going in person and paying these sums.

By paying the Dickson notes, Hyde complied with both his contract with Michael Traver, and also the agreement long ago made, in 1873, with Hammond & Bogue. He also paid the Dickson notes, on which he was a guarant[illegible] Hyde would never have consented to have had

the Goss money applied, except in payment of the Dickson notes, for by such payment only could he get block 2 clear from the Ayres trust deed, and force Hammond & Bogue to such a course as would enable him to clear block 2 completely, and sell the lots thereof

As to the payment of the Richardson-Hyde notes, it was either intended to provide for that by sales of lots in blocks 2 and 3, and by other assets belonging to Hyde, or else Hyde and Hammond & Bogue, with full knowledge of the rights of Henry J. Traver, and of the contract of Michael with Hyde, deliberately planned to throw the burden of paying the Dickson notes, secured by the Ayres trust deed, upon block 1, releasing block 2, and claiming that the Dickson notes had been purchased by Richardson.

From the evidence in the case it would appear more probable that at first the plan settled upon was to provide for the payment of the Hyde notes by sales of the still unsold lots in blocks 2 and 3, and from other means and property of Hyde. Hyde, undoubtedly, thought this could be done, for he swears (Printed Trans., 141; Ans. 84 and 85) that he could then have paid off what he claims was still due on the Dickson notes, viz.: $10,000, and this sum was the amount of the Richardson-Hyde notes. At that time, all the lots in block 2 were still owned by Hyde, except lots 1 to 19, both inclusive, sold to Goss. Hyde, after making his contract with Michael, had repurchased several lots in block 3. He had built four houses, costing $11,000, two of them on lots 31, 32, 35 and 36, in block 2, and two on lots 37, 38, 42 and 43, in block 3.

Printed Trans., 131, 132; Ans. 16.

Altogether, he had twenty-nine lots in block 2, and several lots in block 3, after January 28, 1875.

Printed Trans., 131-132; Ans., 16 and 19.

After this, and before the filing of Traver's bill, he had sold lots 31 to 36, both inclusive, block 2 (Printed Trans., 134; Ans., 28), and, as he says (Printed Trans., 141; Cross-ans., 85), "was negotiating the sale of most "of that property I had, which would turn into clear "property; that I could thus meet the whole liabilities "(Dickson notes), aside from what I had already bar-"gained for, for cash."

Printed Trans., 141; Cross-ans., 84 and 85.

Hyde was then worth from $60,000 to $70,000, as he swears (Printed Trans., 133; Ans., 21). Hyde was liable as maker on the Richardson-Hyde notes, and also Michael Traver was liable thereon as guarantor.

There was, evidently, to Hammond & Bogue security enough on the Richardson-Hyde notes, after releasing the Goss lots, considering Hyde's wealth and Michael Traver's indorsement, and the value of block 2, not only to pay the $5,641.87 advanced by them, but also the $6,000 and $4,000 Richardson and Hyde notes, *provided* they looked out carefully, and saw that *all* the proceeds of the loans they made on block 2 to Hyde, and the proceeds of *all* sales were immediately applied on such indebtedness.

At any rate, this was all they *could do*. It was a matter of necessity to allow the Goss lots to be released, as we have seen, and equally a matter of necessity to release, from time to time, lots in block 2, to reduce the

$5,641.87, and the $6,000 and $4,000 notes. If the loan of $5,641.87 had not been made, and the Goss lots had not been released, and the Dickson notes paid, block 2 would have been sold for the Dickson notes. If the balance of the lots in block 2 were not released from the Hammond trust deed, loans to Hyde through Hammond & Bogue, as shown on Printed Trans., 243 ($7,100 in all), Hammond & Bogue would prevent the use of the assets to pay back to them the $5,641.87 loaned and charged to Hyde, and also the $6,000 and $4,000.

Hyde played his cards very shrewdly, and literally *forced* Hammond & Bogue, from step to step, and they as carefully watched him, caring first for number one, by having their own advances paid in full by Hyde.

Printed Trans., 168; Cross-ans., 34.

It is possible, and even probable, though, that as early as January 15, 1875, the conspiracy was originated of throwing the whole burden of paying the Dickson notes on block 1. As to this conspiracy, we will speak more of presently.

There is one additional reason, and perhaps one of the very strongest, why the theory of appellants' case that the Dickson notes were purchased, and not paid, cannot be the truth.

More properly, perhaps, we should say, while the attempt might have been made to purchase, they were not purchased, as it was *legally impossible* to purchase them.

The two last Dickson notes were sent forward to Preston, Kean & Co. for collection, by the LaFayette bank of Cincinnati. The cashier, in his letter to Preston, Kean & Co., wrote: "Mr. Ayres will call at your office

"and examine the trust deed and release. If he says they "are all right, then notify James C. Hyde, No. 14, Nixon's "Building, that you hold the paper for *payment*. When "*paid*, please send check on New York, $10,000."

Printed Trans., 259.

Mr. Peachy, the president of the LaFayette bank, says these notes were left by John Dickson for *collection*, and forwarded to Preston, Kean & Co. for *collection*, for account of Dickson, and that the instructions contained in the letter above quoted were the sole ones given him by Dickson. That these notes were *not* discounted by the LaFayette bank, but forwarded, as above recited, for payment and collection. That $10,000 of the amount *collected* was received in due course of mail, and the balance remained to the credit of the LaFayette bank, with Preston, Kean & Co.

Printed Trans., 261.

John Dickson swears that he gave the instructions contained above, and no other, to the LaFayette Bank; and that he never gave to the LaFayette bank, or any one else, any instructions to have the last two Dickson notes sent to Chicago to be *sold*, but gave instructions to forward them for collection only. He also swears that he received instructions from some one in Chicago to send them there for *payment*, and as he was in correspondence with no one except Hyde, he thinks such instructions came from him; that he does not remember about anything being said to him or written him about any third party taking up and holding, or conveying said notes; that he did not endorse the note not then due "without recourse," in view of any expectation that said note would be so taken up by a third party; that he did not

forward said notes with the understanding that they were to be taken up by a third party who would pay him, or pay in for him, the amount of said notes.

Printed Trans., 262–263.

Both Hyde and Bogue knew that these notes were sent forward for collection *only*, for Bogue says, in his testimony (Printed Trans., 144; Ans. 14): "Mr. Hyde "came into our office on the 15th of January, 1875, and "said to me that there was some paper, known as the "Dickson notes, sent here from Cincinnati for *collection*." "Ayres says (Printed Trans., 127, last Ans.): "I under-"stood from Mr. Bogue that he was there at the bank "with the object of taking up that note, sent there for "collection."

The overdue Dickson note had endorsed thereon: "Pay W. J. Dunlap, cas., or order, for collect. of Ashland "Natl. Bank, Ashland, Kentucky."

W. J. Dunlap, cashier, had endorsed this note over to Preston, Kean & Co.

Dickson's name was endorsed thereon, as a guarantor, underneath the names of Hyde and Snyder & Lee. This note had been, and, so far as the proof shows, was, when sent with the note last due, the property of said Ashland bank (Printed Trans., 262; Cross-ans. 1), Dickson acting as the agent of the Ashland bank.

The note due December, 1875, has endorsed thereon, "Pay Preston, Kean & Co., or order, for *collection*, with-"out recourse, to W. J. Dunlap, cashier."

The law is too firmly settled, beyond dispute, that where notes are endorsed for *collection* such endorse-

ment is "*restrictive*," and suspends the negotiability of the note.

Sweeney et al. v. *Easter*, 1 Wall. U. S., 166.
Best v. *Nokomis National Bank*, 76 Ill., 608.
Fawsett v. *Nat. Life Ins. Co. of the U. S.*, 97 Ill., 11
Barker v. *Prentiss*, 6 Mass., 430.
Ancher et al. v. *Bank of England*, Doug., 637.
Sigourney v. *Lloyd et al.*, 8 B. & C., 622.
Same v. *Same*, 5 Bing., 525.
Snee et al. v. *Prescott*, 1 Atkins, 245.
Truttal et al. v. *Bazaudore*, 8 Taunt., 100.

It is, of course, absolutely certain, from the evidence, that Bogue *intended* to *pay* these Dickson notes, when the payments were made at Preston, Kean & Co.'s, and not to purchase them, and that Richardson's name at that time never entered his thoughts, as a purchaser. But, for the sake of the argument, concede it was his intention, as he now swears, to *buy* them for Richardson.

We respectfully submit that there is no law or authority by which it can be maintained, with any show of reason, that under *such circumstances* as the case at bar, Bogue *could* buy them for Richardson. As we have said, notes were restricted, by actual endorsement thereon, to payment only. It was the intention of Dickson, the Ashland and La Fayette banks, and that of Preston, Kean & Co., *not* to sell, but to collect *payment* thereof merely. Directions to collect *payment* were only given. Even if the intention of Preston, Kean & Co. was to *sell*, Bogue knew that they had no *authority* to *sell* the notes, and so did Hyde. Bogue himself, as we have shown,

admits this, by saying Hyde *told* him these notes were sent forward for *collection*.

Counsel cites, with great apparent confidence, the case of *Dodge* v. *Freedmen's Sav. & Trust Co.*, 93 U. S. R., 379. We do not conceive that this case is at all in point. The objection to all the authorities cited by appellant is not that his law is defective, but that his authorities do not suit his facts. The facts in the Dodge case are materially different from the case at bar.

In the Dodge case, there is no evidence whatever that it was *not* the intention of both the owners of the notes, as well as the Freedmen's Trust Co., of the owners to sell and the Freedmen's Trust Co. to *buy*, the inference is that it *was* the intention to sell and buy, respectively. The court says: "It (the Freedmen's Trust Co.) dealt with the "bank or banks holding the notes, in the ordinary way." In the case at bar it was not only *not* the intention of Dickson to *sell*, but he gave orders directly the opposite, which were duly forwarded. The minds of *both* parties must concur before a sale can be made. Preston, Kean & Co. were not the agents *of Hyde*, but of Dickson, and the Ashland bank.

"By law, a collecting bank is the agent of the holder "of the note, and in no sense the agent of the maker."

Dodge v. *Freedmen's Sav. & Trust Co.*, 93 U. S. R., 379, 385.

Even if Preston, Kean & Co. intended to sell instead of having the notes paid, Bogue and Hyde knew Preston, Kean & Co.'s want of authority. We know of no law in such case that can *force* the owners of notes to sell, when they only wish to have the same paid.

In the Dodge case, the court says: "There is no "knowledge that it (the Freedmen's Trust Co.) had any "knowledge of any obligation of Huntington to take up "the notes, if any such existed; and there is no evidence "that Huntington did anything about procuring an ar- "rangement for their being taken up." In the case at bar, Michael Traver testifies (Printed Trans., 115; Ans. 14): "Then I asked Mr. Bogue if he was aware that "all of block 1 belonged to my brother? *He said he was,* "*as Mr. Hyde had frequently told him the agreement that* "*I had with my brother;* that he (*Hyde*) *had taken the* "*property and notes to carry out the agreement with my* "*brother, so that I could fulfill.*"

This evidence of Traver is corroborated by Josiah S. Wolfe, who testifies that Bogue told him before his alleged purchase of the Dickson notes that Henry J. Traver owned block 1.

Printed Trans., 183 184; Ans. 13, 15, 16, 27, 28, 31.

Bogue's statement, when found out in his rascality to Michael, that he supposed Hyde owned block 1, is of course to be expected, and entitled to no weight. Huntington, the court says, in the Dodge case, was under no legal obligation to pay the notes; his name was not on them, and he had a right to refuse to pay them, and made no arrangement to pay them, or advance the money by which they were taken up.

In the case at bar, Hyde was a guarantor of the Dickson notes, and was bound also by his contract, both with Hammond & Bogue and Michael Traver, to pay them, and also by his covenants in the trust deed to Hammond. The evidence in the case at bar, is that

Hyde made especial arrangements to *pay* the Dickson notes; and appellants' own witnesses swear he furnished the money, and it was charged to him, and he repaid it to Hammond & Bogue.

In the Dodge case, the maker is the party who seeks to take advantage of a supposed payment by another. In the case at bar, the guarantor is doing his best to promote a fraud, by denying that he himself paid them. In the Dodge case, the purchaser had no notice that no authority was given to sell. In the case at bar, Bogue knew it, and so admits. There could scarcely be any two cases where the facts could be more at variance than in the Dodge case and the case at bar.

In the Dodge case, the gist of the whole decision may be summed up in saying that, where it is the intention of both parties, the holder and the party advancing the money, that the note shall be purchased and not paid, it shall be considered as purchased. It is uncontradicted, that in the case at bar, it was *not* the intention of the holder to sell the note, and that Bogue knew it, and that the notes, by their face, showed the want of authority, as they were endorsed for collection. We fail to see the pertinency of the case.

II.

DID OR DID NOT SUCH A CONSPIRACY AS IS CHARGED BY APPELLEE EXIST?

We think the evidence clearly shows this conspiracy.

If the notes *were* as a matter of *fact* paid, and not purchased, the essential element of the conspiracy is proven. Appellee's agents deny this payment, and their denial of facts and admissions which they undoubtedly *did* make if the notes *were* paid, can only be explained on the theory of a conspiracy, through absolute perjury to deny such admissions of acts, and to claim such notes were *purchased*, and not *paid*.

We have discussed this question of payment by itself sufficiently, and shall refer to it, if again, only incidentally. If the notes were as a matter of fact paid, no further discussion of this case is necessary. Since, however, appellant claims as a matter of fact they were not paid, it is proper to consider whether appellant can maintain what he now seeks by his bill to foreclose to do, viz., force Henry J. Traver to pay the whole $10,000, or lose block 1.

Appellant is met by this proposition at the beginning of this branch of the discussion.

Granted, for the sake of the argument, that Richardson owns the Dickson notes, as purchaser, can Richardson, as the holder of the Dickson notes, procure the release of block 2 from Ayres, which secured his notes, for Hyde, and, without Henry J. Traver's consent or will, force Traver to pay the whole of the $10,000?

Block 2 was amply sufficient to pay Richardson.

Bogue's own evidence is that, on a low valuation, before improvement, block 2 was worth $25,000.

Trans., 247; letter December 28.

Hyde swears that after the loan he fenced all the property, made sidewalks, planted trees, carried the city water on the premises, and built two two-story buildings, worth $5,500, on lots 31, 32, 35 and 36, in block 2.

Printed Trans., 131, 132; Ans., 16 and 19.

Block 2, then, by appellant's own testimony, was worth at *least* $30,500, over three times the amount of the money due Richardson.

In other words, can Richardson throw away $30,500, over three times the amount due him, especially provided for his security, and then claim that Henry Traver must still pay him? This, too, when block 2 was, with other property, specially set apart and *given*, by Henry to Michael, and by Michael to Hyde, for just the purpose of paying the Dickson notes, and that, too, without consideration? The proposition is too plain for argument.

Had either of the Travers ascertained about the intention to have block 2 released before the execution of the release deed by Ayres, such action could have been enjoined at once. An injunction was issued when the facts were ascertained, against any further misuse, waste and *theft* (for it *was theft*) of block 2, by Richardson and Hyde. If an injunction could have been obtained in time, Richardson and Hyde would have been *forced*, by the decree of a court of equity, to exhaust block 2 before resorting to block 1. In such contingency, block 1 never would have been *touched*, as block 2, with Hyde's other means, was amply sufficient to pay the Dickson

notes. This, upon the theory that Richardson *purchased* the Dickson notes, for it will be remembered that except upon the theory of *purchasing* the Dickson notes Richardson has no semblance of claim on block 1, as his trust deed never covered it, only by its terms extending over block 2.

The question now resolves itself into this: Who shall suffer, Richardson, who committed, in obtaining the release (for he is responsible for, and must stand by Bogue's acts, his agent), a wrong upon Henry J. Traver, from the commission of which he could be enjoined; or must Henry J. Traver, the victim of the wrong, suffer?

Equity furnishes but one answer to this. He who commits the unlawful act must suffer the consequences of it.

Counsel for appellant seem to realize the gravity of this situation, and rest very largely their case upon (*in view of the evidence*) the utterly untenable theory that Hyde was the agent of Henry J. Traver.

Counsel says (page 20 of his brief):

"There is no dispute that he, Hyde, was authorized "and expected to procure releases in parcels, and in so "doing represented both the Travers in giving such "assent and sanction as was requisite on their part to the "release of such parcels, so far as concerned the trustee "and all third parties." Again (page 42), counsel says: "It is not disputed that Hyde was authorized and "required to procure releases." Counsel here take the position that Richardson and Hammond & Bogue, who knew, according to their story, nothing whatever about such claimed authority to Hyde (inasmuch as they, from their story, knew nothing about Henry J. Traver's con-

tract with Michael and Michael's with Hyde), can take advantage of such authority unknown to them at the time, when, without any knowledge of such authority, their action in obtaining from Ayres a release from Hyde was an unmitigated fraud.

We deny utterly that Hyde was the agent or ever represented Henry J. Traver in *any* way. The position that Hyde was the agent of Henry J. Traver is utterly repugnant to the facts in this case.

Henry J. Traver and Michael Traver made a partition of their interests, and Michael Traver, as the consideration and sole consideration of the assets he received, agreed to pay the Dickson notes. Michael was no agent of Henry's in any respect. The assets that Michael received were his own, after their reception, and in no sense Henry's. Henceforth, from the partition in business Henry and Michael were strangers; they were opposing parties, so to speak; parties of the first and second part to a contract, while the agreement was that the assets received should be used by Michael in paying the Dickson notes; when the notes were paid, Michael might do with his assets as he saw fit, do with them as he did with his other property. It is, in our view, absurd to say that under such a contract Michael was the agent of Henry J. Traver.

Hyde made his contract not with Henry J. Traver, but with Michael. He merely assumed with Michael to carry out his contract. Henry J. Traver never released, and Michael had nothing whatever to do with Hyde. The moment Michael Traver completed his contract, viz., paid the Dickson notes, that moment Henry J. Traver was entitled to a release from Ayres, and

could have by bill compelled the execution of one. He wanted no agent to obtain any release, and, so far as paying the notes were concerned, Michael was to do it by himself, not Henry by Michael. There was no agreement whatever about the releases, as Henry swears.

Printed Trans., 110; Cross-ans. 27.

Michael Traver says (Printed Trans. 123, Re-direct-Ans., 3), in answer to the question: "State whether, or "not you acted in any way for your brother after this "contract was made relative to his interest in block 1?"

A. "No, sir; I had no business with him, except to "fulfil my agreement with him, which I have stated."

The statements of both the Travers on the point of want of authority in Michael to act for Henry; want of authority in Michael to authorize Hyde to act for Henry; an utter absence of any authorization to Hyde direct, by either of the Travers, to act in obtaining releases, or in any other way, for Henry J. Traver, are emphatic, full and complete.

Printed Trans., 193, 197.

The evidence on this subject, and also the denials by the Travers, of any interview at Snyder & Lee's office, such as Hyde claims, are treated and detailed so fully on pages 5 // in our statement of facts, that they need not be rehearsed here. A reference to the statement is enough. Such evidence of the Travers is so strengthened and confirmed by the letters, dates of deeds, etc., that it must be acknowledged by all that this evidence of Hyde is utterly false. Both appellant and appellee agree that Hyde was a rascal (Appellant's Brief, page 37, third paragraph), and his evidence, except as corroborated by

other proof, can scarcely, with a good grace, be much relied upon by appellant, when swearing on his (Hyde's) own interest, as he now is, for appellant.

Counsel for appellant may say that in estimating the amount of property which Richardson has caused to be released, we must remember that block 2 secured both the Dickson and Richardson-Hyde notes, $20,000 in all, instead of merely the Dickson notes, and that while block 2 was released, such action was necessary in order to get possession of the Dickson, or rather, means sufficient to purchase the Dickson notes.

But it must be remembered that appellant claims solely now as the owner of the Dickson notes, to have the right to foreclose on block 1. If, to provide means to buy these notes, he was forced to procure the release of block 2, that is no concern of Henry J. Traver's. Appellee is neither interested nor liable on the Richardson-Hyde notes. If, in loaning his $10,000, appellee, through the criminal carelessness of his agents, Hammond & Bogue, loaned it on insufficient security and virtually threw it away, this can not be charged on Henry J. Traver. What, from the facts, Hammond & Bogue thought it necessary to do, was to have advanced $11,641.87 to buy the Dickson notes. This was done, really by Hyde, though they claim Richardson did it. Conceded, for the sake of the argument, that Richardson did advance it. This $11,641.87 came from the proceeds of block 2; $6,000 of it from the lots in said block 2, sold to Goss; $5,641.87 from loans on parts of block 2, for while Hammond & Bogue at one time advanced this sum, they were repaid from these loans, and therefore, in reality, this $5,641.87 came from block 2. To effect these loans,

and get the $6,000 from Goss, it was necessary to release block 2.

But, is Henry J. Traver chargeable with and responsible for Hyde's, Ayres' and Hammond & Bogue's unlawful conspiracy in releasing block 2? The trust deed to Ayres covered block 2, as well as block 1. Henry J. Traver got undivided title to block 1, before Hyde or Michael Traver got title to block 2. Henry had his contract with Michael that he (Michael), with the assets given him, without money consideration, by Henry, or with Michael's other resources, would pay the Dickson notes.

For three reasons, Henry had the right to force the sale of block 2, for the satisfaction of the Dickson notes.

First and foremost, because the Ayres trust deed covered it; and all knew this. Second, because of this oral contract with Michael, and Michael's with Hyde. The evidence conclusively shows Bogue knew that it was Hyde's duty to pay those Dickson notes, and that he knew of this oral contract. According to the doctrine of selling by the inverse order of alienation, Henry had the right to have block 2 sold to pay said Dickson notes, before resort could be had to block 1. Again, he had such right by virtue of such oral contract. In fact, we may say, to sum it up, for the purposes of paying the Dickson notes, block 2 is to be considered in law the property of Henry, as it was necessary to buy up the Dickson notes to use block 2; in effect Hammond & Bogue used $11,641.87 of Henry Traver's money. Before asking him to furnish any more money from the sales of block 1, as they now seek to do by their bill, they must repay him this $11,641.87. When this is done, he will be very happy to pay off the Dickson notes.

What appellant in effect seeks now to do is not only to force Henry J. Traver to buy for him the Dickson notes, but to force him to pay them after they are bought. We fail to see the justice of this.

The mere fact that Hyde used the $10,000, originally obtained from Richardson, in paying the first two Dickson notes, and then obtained a release of block 3, cannot affect the situation. Hyde was not Henry J. Traver's agent. Henry J. Traver knew nothing about the agreement of Hyde to obtain a release of block 3 with this $10,000. Henry J. Traver knew nothing about the release of block 3, till in July, 1873, many months after it was done.

Printed Trans., 111, and Cross-ans., 28.

Hyde told Michael Traver that he had got enough money out of block 3 to pay the two first Dickson notes. (Printed Trans. 116; Ans. 17.) The fact that no objection was made to the release of block 3, by either of the Travers, is no business of Richardson's. Richardson, when block 3 was released, had no interest whatever in either block 3 or the Dickson notes. Michael Traver says in regard to this:

"Mr. Hyde had told to me, that he had gotten enough "money out of block 3 to pay off those two Dickson "notes. Therefore, we were satisfied, then, that block "should be released, because the avails from that block "paid off half the entire debt. This release released "eight of the lots I had agreed with my brother to "have released, and then block 2 was ample security "enough to meet the balance of the Dickson notes."

Printed Trans., 116: Ans., 17.

The inference that counsel seems to seek to convey on page 43 of his brief, that either of the Travers knew of the violation by Hyde of his oral contract with Hammond & Bogue as to the application of the Richardson $10,000 loan, is unjust and utterly unfounded, either in part or in the evidence in this case.

As a matter of *fact*, Hyde had no right to obtain the release of block 3 without Henry J. Traver's consent, till *all* the Dickson notes were paid. In the absence of any knowledge of Hyde's oral agreement with Hammond & Bogue as to the release of block 3, when the first two Dickson notes were paid, the only persons who could complain were the Travers.

The fact that Henry J. Traver did not complain when he did learn of the release of block 3, because he was not injured, fails, as we conceive, to create any equity in Richardson. Such want of complaint when he was *not* injured will not prevent him from complaining when he *is* injured, surely. While, as matter of precaution for his *own* interests, Henry J. Traver might have cautioned Ayres, the trustee, Richardson has no possible right to complain. It is none of his business, for neither, as we have said, did either of the Travers know of his oral agreement, through Hammond & Bogue, with Hyde, nor did Richardson have any title or interest in block 3, nor was Hyde Henry J. Traver's agent.

The simple fact is, appellant seeks to throw upon Henry J. Traver, an innocent party, the blame and evil results which should fall on appellant himself and his own agents, resulting from their criminal carelessness and foolish trust in Hyde.

Appellant seeks to invoke against Henry J. Traver

his covenants in his deeds against incumbrances. He would seek by this not only to prevent all evidence being given of the oral agreements between the Travers and the oral agreement between Michael Traver and Hyde, but also argues from such covenants that Richardson's agents have constructive notice that *Henry J. Traver* is to pay the Dickson incumbrances. Hence the claim that in shifting the Dickson notes over on to block 1, Richardson and Hyde did nothing more than the covenants in Henry J. Traver's deed gave them notice they had a right to do.

To argue that constructive notice authorizes them to do what *actual* notice tells them they have no right, is a somewhat curious doctrine to contend for.

Or, to argue that so called constructive notice of this kind, would authorize Richardson, or the trustee, Ayres, to take into their own hands, without Henry J. Traver's express assent, the responsibility of shifting encumbrances in this fashion, thus loading up and dealing with another's property, is a new doctrine to us. A trustee, it is well settled, is an agent for both parties, as well for Henry J. Traver as for Dickson.

2 Jones on Mortgages, Sec. 1906.
Meecham v. *Steele et al.*, 93 Ill., 147.
Ventres et al. v. *Cobb et al.*, 105 Ill., 33.
Tatum et al. v. *Halliday, Adm.*, 59 Mo., 428
Howard v. *Ames*, 3 Met., 311.

What authority Ayres had to act in this way, without Henry J. Traver's consent, his principal, or what right Richardson had to get him to release block 2, we can not see, and assert there is none. Counsel have cited

no cases on this point, and we do not believe there are any. There might have been an hundred good reasons why Ayres should not have acted, or Richardson persuaded him to act; various contracts, by which, if the release was not given of block 2, Henry J. Traver could enforce the payment, by others, of these Dickson notes.

This is a method of speeding a foreclosure, forming an anomaly in jurisprudence. If Dickson or Richardson wished to foreclose, there was a method laid down by law, and only one, and that was to file a bill to foreclose, against *both* blocks 1 and 2, and letting Henry J. Traver take his own methods of providing a means of payment. In the case at bar, a means had been provided, and that was, his contract with Michael.

By Bogue and Hyde's assumption of a right to deal with another's property, block 1, in this fashion, loading it with this encumbrance, by releasing block 2, they robbed Henry J. Traver of a means of compelling Michael, and Michael compelling Hyde, to pay the Dickson notes. Having done this wrong, it is equitable Richardson should suffer, not his victim, Henry J. Traver.

But, we are not compelled to argue this point of the case upon the assumption that Richardson had no notice that Hyde was bound to pay the Dickson notes, but had notice that Henry J. Traver was bound by his covenants to pay the Dickson notes.

The appellant's own witnesses *admit* that they had full notice of whose duty and contract it was to pay the Dickson notes, and that, too, before this alleged purchase of the Dickson notes by Richardson.

Bogue, himself, says (Printed Trans., 144; Ans. 13):

"The circumstances of the loan was: We had some "money to loan. Mr. Hyde showed us the security "which he wanted to raise money on, and we loaned the "money to him, supposing, or meaning, that it should be "a first loan. *I think Mr. Hyde stated that there was an "incumbrance there: that he wanted this money, or part "of it, to remove, before this would be an absolute first "lien.*"

What this encumbrance was, is stated by Mr. Bogue himself.

He says (Printed Trans., 144; Ans. 14): "Mr. Hyde "came into our office on the 15th of January, 1875, "and said to me that there was some paper, known as "the Dickson notes, which was a first lien upon blocks 1 "and 2, in Traver's subdivision, sent here, from Cincin- "nati, for collection, and that it was necessary, in order "to save the Richardson loan, which we had made to "him, of $10,000, that it was necessary for me to buy "that paper, in order to save the loan we made to him."

On Printed Trans., 151; Cross-ans. 39: "When the "mortgage, or trust deed, was given us, he told us "that there was a first lien, which this money was to pay "off."

Remember, that these Dickson notes referred to were notes signed by the Travers, and, in December, 1872, *guaranteed* to be paid by Hyde, and this long after their date, by written guaranty thereon (Printed Trans., 129, 130, 215, 216), and that Bogue himself paid, or, as he says, purchased, these notes at Preston, Kean & Co.'s

By appellant's own witnesses it is shown that long since the date of the deeds containing these covenants, by Henry J. Traver, upon which appellant so confidently

relies, appellant, through Bogue, had notice that Hyde, since the making of the Dickson notes, had guaranteed their payment, and that he was to pay them with the very money loaned by Richardson on *Hyde's own notes*. This liability was not merely to Dickson, as appellant claims (brief, 40), but an absolute liability to pay the Dickson notes. No quibbling can make it otherwise, or diminish its force. And yet, with such actual notice, they now undertake to force Henry J. Traver to pay the Dickson notes, after releasing the hold which H. J. Traver had on Hyde, to pay such notes. Verily, this is making and unmaking a stranger's contract for him with a vengeance.

Counsel's excuse for Richardson's action, through Bogue, in obtaining a release of block 2, without Henry J. Traver's consent, is not merely founded on an assertion of authority in Hyde to represent the Travers, and an assertion that, because of the covenants in Traver's deeds, Richardson had a right to suppose Henry was really intending to pay the Dickson notes, but also upon the ground that Bogue supposed *Hyde* owned block 1.

The evidence that Bogue did know who was the owner of block 1, has been before referred to. Bogue admits that he examined the abstract, which showed the ownership of block 1 to be in Henry, on January 15, 1875; before his alleged purchase of the Dickson notes, and although Hyde then stated that he had lied to him before, he never looked at the abstract to see whether this block 1, upon which he was to assist in trying to throw the whole burden of the Dickson notes, was owned by Hyde, or by whom.

Printed Abst., 152; Cross-ans., 46 to 57, both inclusive; 144, Ans., 17 and 18.

An improbable story, to say the least. Bogue admitted to Michael that he was aware that block 1 belonged to Henry, as Hyde had frequently told him of the agreement that Michael had with Henry, and that he, Hyde, had taken the property and notes, to carry out the agreement with Henry, so that Michael could fulfil it.

Printed Trans., 115.

Wolfe testifies that Bogue told him, in the early part of January, 1875, that Henry owned block 1, and that Hyde did not.

Printed Trans., 183, 184.

Bogue admits he had the abstracts in his hands at two different times (Printed Abst., 147), and yet would have us take his word, as against that of two witnesses. Is it reasonable to suppose that he never learned who owned block 1, and that, too, when he was so closely connected with Hyde as to be making arrangements about taking him as a partner?

Henry J. Traver's deed to block 1 was duly recorded, and Hammond & Bogue and Richardson must be held to have had notice of Henry Traver's rights and ownership of the block, and this notice can not be evaded by any talk about covenants by Henry J. Traver, as we have shown.

There is but one other link in this chain of conspiracy that we need discuss, and that is the way in which Ayres was deceived, and induced to release block 2.

Mr. Ayres says that he told Bogue and Hyde that he would not release block 2 unless both of the unpaid notes were in the hands of one party, and he would join as the holder of the notes in the release. Hyde said Bogue

would join in the release. Ayres says: "At the same "time *he*, Hyde, made this request for the release of "block 2, by Mr. Bogue's joining me in the release, Mr. "Hyde, in the presence of Mr. Bogue, said there would "be ample security for the unpaid note not due, in block "1, of which he was the owner." To the question, "When Mr. Hyde made the remark at the office of "Preston, Kean & Co., *that he owned block 1* in said "subdivision, what did Mr. Bogue say, if anything?" Ayres answered, "Nothing in that connection. *He stood* "*close to us, and he heard what Mr. Hyde said regard-*"*ing it.*"

Hyde denies that he so told Ayres, but Bogue, who was present, does not deny that the remark was made by Hyde to Ayres, only saying that he does not remember Hyde's making this remark to Ayres. In view of the undoubted fraud committed by Hyde, which counsel for appellant, as well as counsel for appelle, charge on him, but little credence can be given to Hyde's statements, in the light of the positive assertion by Ayres, a disinterested witnes. Aryes says no abstract or records were examined by him (Printed Trans., 126; Re-direct-ans., 3, 4), and with the care with which Ayres acted in requiring the legal holder of both notes to join with him in the release, it would be a strange thing if he had not asked who was the owner of the block upon which, by his release, he threw the burden of the notes, unless it be said he understood the notes were paid. Bogue, according to his statements, supposed Hyde was the owner of block 1. If he, Bogue, *knew* Hyde was not the owner of block 1, then, unquestionably, as a conscious party to this fraudulent conspiracy, both he and Hyde did their best to convince Ayres

that Hyde owned block 1. If Bogue did, as he claims, really suppose that *Hyde* was the owner of block 1, then, in all probability, Hyde tried both in the case of Bogue and Ayres to inspire a belief in his ownership of said block 1, and so informed them. Whichever way we view the question there seems little doubt that Hyde told Ayres just what Ayres claims he did.

Briefly rehearsing the facts of this conspiracy we see proved:

1st. An absolute payment of these notes by Hyde and a fraudulent and false denial of such fact.

2nd. When Henry J. Traver had given means to others without consideration for the purpose of *paying* the Dickson notes, an inequitable and fraudulent attempt not only to force him to use these means to purchase such notes for others, but also to pay them when purchased.

3rd. Both actual and constructive notice to Hyde and Richardson through Bogue of Henry J. Traver's ownership of block 1.

4th. A positive knowledge that it was the contract and duty of Hyde to *pay* the Dickson notes before attempting to loan him the money for such payment.

5th. False and fraudulent statements to Ayres to deceive and mislead him that Hyde owned block 1 and that Bogue owned the Dickson notes.

6th. Sufficient motives for such conspiracy in the minds of men such as Hyde and Hammond & Bogue.

These motives may be summed up as the desire by Hyde to save his property, block 2, even if at the expense of Henry J. Traver, and to reduce the amount

owed by him by $10,000. A desire on the part of Hammond & Bogue to save themselves from blame and liability for their own criminal carelessness in loaning for Richardson on a second security. Again, a desire to prevent Richardson pressing Bogue for payment on the loan to him, personally, which Richardson would assuredly have done had he known the real facts, and a desire to protect themselves from loss by reason of their loan to Hyde.

It is well settled that it is competent for a party to show a different consideration from the one stated in the deed.

Sidders v. *Riley*, 22 Ill., 109.
Richardson v. *Clow*, 8 Brad., 94.
Stone v. *Duvall*, 77 Ill., 475.
Benjamin v. *McConnell*, 4 Gil., 536.
Heman on Est., § 246, pg. 267.
Ayers v. *McCormick*, 15 Ill., 230.
Kimball v. *Walker*, 30 Ill., 482.

III.

We have bestowed comparatively little attention to the authorities cited by appellant, for the reason that, as we said in the beginning of this argument, we think this case is more dependent for its decision on facts than on law. There are some considerations, however, both upon these points and also upon what appellant calls his equities, which we briefly desire to consider.

Can the parol agreements be held to be valid as between the parties to this litigation?

The sole consideration of the conveyances from Henry J. Traver to Michael Traver was Michael's agreement to pay the Dickson notes. The sole consideration of the conveyances from Michael to Hyde, and from Earl to Hyde, was that Hyde should step into Michael's shoes, and pay the Dickson notes, in place of Michael. As between Henry J. Traver and Michael Traver and Hyde, who merely stood in Michael Traver's shoes, it would be allowable to show these oral contracts, they being the sole consideration for the conveyances.

But counsel say that while that may be so, as between Richardson, such evidence would not be competent because of Henry J. Traver's covenants, which are in express contravention of these contracts.

To this we answer:

1st. The question involved is not, we conceive, *mainly*, can an unexecuted parol contract be shown, contravening a written one, but, as a matter of fact, has that parol contract been executed and fulfilled? The statute of frauds cannot be invoked against a completed and fulfilled contract. If the Dickson notes are paid, that ends the controversy. The indebtedness being discharged, as a matter of *course*, we are entitled to have the trust deed canceled and discharged. One fallacy of appellant's argument is that, throughout, he assumes that the Dickson notes are still unpaid.

2d. The Richardson-Hyde notes, if appellant's theory be correct, and evidence of Bogue and Hammond be true, were long before suit paid, and Hammond has released all, excepting ten lots, securing these

notes. As the notes are paid, the trust deed is legally discharged and satisfied, as to *all* lots conveyed by the trust deed. According to appellant's theory, all the rights he has are under the Ayres trust deed. The covenants against encumbrances by Henry J. Traver, are contained in a deed, *subsequent* to the Ayres trust deed, and runs only to the grantees of Henry J. Traver and his assigns. Richardson, claiming under the Ayres trust deed, a prior deed to the Henry J. Traver warranty deed, cannot claim to be an assign of Henry J. Traver. Covenants do not run *back* along the chain of title, but *forward*.

Richardson and Ayres are complete strangers to these covenants, and cannot evoke them, either as an estoppel, or sue upon them.

In Rawle on Covenants, the rule is thus laid down:

"It may, therefore, be considered as settled, in accordance with principle and authority, that where one "has parted with all his interest in the land, he parts also "with all right to, or control over, the covenants which "run with it, and he can only regain that right over "them by being made liable upon his own covenants, and "satisfying that liability."

Rawle on Covs., 341.

Henry J. Traver has nothing to do with Michael's or Earl's covenants. They were not his agents.

3d. The bill of Henry J. Traver, and the facts, show a clear case of fraudulent conspiracy on the part of Hammond & Bogue. Richardson, as the principal, cannot profit by the fraud of his agent.

No covenants of this kind can be evoked, to veil and

conceal fraud, in a court of equity. The very authorities cited by appellant, prove that when a party is guilty of fraud, or chargeable with it, or is chargeable with actual notice of extraneous contracts, he cannot shelter himself behind the terms of a written instrument.

IV.

SUBROGATION.

The doctrine of subrogation cannot apply in this case. It is apparent that Richardson, at the time his agent paid the Dickson notes, had no lien upon block 2, or any other portion of the Traver subdivision. At that time he was no subsequent mortgagee or incumbrancer to the Dickson incumbrance. Counsel seems to intimate that Bogue, as agent, was compelled to take up the Dickson notes to save Richardson's loan secured upon block 2, yet he claims that Richardson's notes, representing this loan, were fully paid before Bogue obtained the Dickson notes. The record shows that the trust deed, securing the payment of the Richardson notes on block 2, was released by Hammond, the trustee, on January 15, 1875, while the taking up of the Dickson notes, and release of the trust deed securing them, as to block 2, did not take place until January 29, 1875, some fourteen days later. Now, as we understand the doctrine of subrogation, Richardson, if he had desired to be subrogated, as owner of the Dickson notes and trust deed, he should have kept alive his trust deed on block 2, and taken up the Dickson

notes and trust deed, the senior incumbrance, as a protection to his junior trust deed. And in doing this he cannot use his junior lien, or the proceeds thereof, to pay off the Dickson notes, and maintain the right to be subrogated, because he loses the position of a junior incumbrancer the moment his notes are paid, and his trust deed on block 2 is released. The moment he loses the position of a junior incumbrancer, that moment he becomes a stranger, and has no right to be subrogated to the ownership of the Dickson notes by paying them. He must must be in a position to redeem, and he must pay off the senior incumbrance, in addition to the amount he has invested in his junior incumbrance.

1 Jones on Mort., Sec. 874, 874*a*.
1 Hilliard on Mort., 335.
1 Hilliard on Mort., 336.
Beaver v. *Slanker, Admr.*, 94 Ill., 183.

Again, according to counsel's own theory of the case, the doctrine of subrogation cannot apply. He contends that Bogue made a contract with Hyde, wherein Hyde agreed that when he paid $10,000 on the Dickson notes, he was to be no longer liable on the Richardson notes, but that the transaction was not "fully completed" until the Dickson notes were reduced to $10,000, by subsequent payments made from time to time. The Dickson notes could not become the property of Richardson until Hyde made sufficient payments to reduce the amount due thereon to $10,000. Counsel says, "As the payments "were afterwards made by Hyde, it was satisfied, and "releases given in parcels from time to time, as the pay-"ments were received."

Page 52, Ingalls brief.

From page 243 of printed transcript, it appears that releases were given by Hammond, March 9, 1875, February 23, 1875, and March 23, 1875. Hence, the time when the Dickson notes were reduced to $10,000 was long after January 15 and 28, 1875, when the Richardson notes were fully paid and satisfied. If the Richardson notes were fully paid and satisfied, and the trust deed securing them on block 2 was released January 15, 1875, where was Richardson's junior lien he was protecting when his agent, Hammond, was giving releases, in March, 1875, and receiving money to consummate the purchase of the Dickson notes?

But counsel does not actually say his client became the owner of the Dickson notes and trust deed by subrogation, but sometimes says there was an "exchange of "securities," and at other times says they were "substi- "tuted" for the Richardson notes secured by the trust deed on block 2. *Traded with somebody.*

To state the matter more definitely, and to give counsel the full benefit of his position, we should say, that the records of Cook county showed to the world, that both blocks 1 and 2, in Traver's addition, was covered by a blanket mortgage, or trust deed, to secure these two Dickson notes. And that both blocks, so far as the record is concerned, were held, and bound to pay the last two Dickson notes. They also showed that Henry J. Traver was the sole owner of the equity of redemption of said block 1. That Michael Traver and wife, on the 5th day of September, 1872, conveyed all of said block 1, to Henry J. Traver. That Hyde was the owner of the equity of redemption of block 2. That on December 28, 1872, Hyde gave a deed of trust

upon his equity of redemption in block 2, to secure two notes, one for $6,000, and the other for $4,000, payable to Richardson, which was subject to the trust deed securing the Dickson notes.

It will be perceived that Mr. Richardson, of his own accord, without the agency or knowledge of Henry J. Traver, accepted of the equity of redemption that Hyde held in said block 2, as his security for the payment of the $6,000 and $4,000 notes. This statement from the record, alone and independent of any parol agreement, must be admitted, gave every person notice that Henry J. Traver had a right to have the whole of the proceeds of block 2, when sold, if necessary, applied to the payment of the two Dickson notes. No court of equity or any power, could rightfully deprive him of this right. Mr. Richardson had no right to any portion of said block, until these Dickson notes were fully paid. This was his contract when he accepted of Hyde's equity, as aforesaid.

About the first of January, 1875, values were shrinking rapidly, and Bogue became alarmed, and fearful that Hyde's equity of redemption in block 2, would not pay the two Richardson notes. Under this state of alarm and fear, how did he act? Did he use block 2, as charged by the Dickson trust deed, and record, to pay off the Dickson notes?

The evidence upon this point, and counsel's own history of the case, show that, by colluding with Hyde, and knowingly deceiving the trustee, Ayres, they sold out the whole of block 2, to Goss, and other innocent purchasers, the proceeds of which found its way into the hands of Bogue. Placed in his hands, as every disinter-

ested person would suppose, to be used as provided for in the Dickson trust deed, and, as the record of said deed notified the world they should be used, viz.: to pay off and cancel these two Dickson notes. But, Bogue and Hyde testify that they have made some "exchange" of securities, as debtor, and holder of the Hyde-Richardson notes, or "substitution"; that Richardson, through Bogue, is now, for some mysterious reason, entitled to take the proceeds of the very property that Henry J. Traver had set apart, in the Dickson trust deed, to pay said Dickson notes, to use them to pay off, by this "exchange," his junior incumbrance, secured only by Hyde's equity of redemption in said block 2. But this is not all. He also claims, by this "substitution," after he had paid and satisfied his junior incumbrance with these same proceeds, to again take them, and buy up with them, the senior incumbrance, the Dickson notes.

So that, in this manner, he now claims to be the owner of the Dickson notes, and the trust deed to Ayres upon block 1, and has brought his original bill in this cause, to foreclose the same on block 1, upon Henry J. Traver's property solely. Thus, this *junior mortgagee* stands apparently triumphant, but with *unclean hands*, in a court of equity.

This exposes the absurdity of their position, and is stated upon their own theory of the case, and independent of the parol agreement heretofore discussed.

V.

EQUITIES COMPARED.

Much has been said as to the equities of Richardson as compared to those of Henry J. Traver. Equity will not, we understand, relieve from gross carelessness at the expense of another. Richardsou trusted to Hammond & Bogue. Hammond & Bogue trusted to Hyde. If Hammond & Bogue were grossly and criminally careless in loaning money for Richardson, as everyone must admit, trusting as they did, while dealing with another's property, to Hyde to release a prior mortgage, then Richardson must abide by the result. Richardson's agents were on the ground, in Chicago, real estate men, fully competent to care for his interests. Henry J. Traver was a farmer, living in Wheaton, in another county. There was no fault on the part of H. j. Traver, but gross carelessness on the part of Richardson's agents. Hammond & Bogue knew in the very beginning that there was a prior mortgage on the land when they loaned the money, and knew that this very money loaned, raised on Hyde's own notes, was by Hyde to be applied on the Dickson notes. January 15, 1875, they were informed fully the nature and extent of this Dickson encumbrance, and saw by the notes that Hyde was a guarantor thereon, and yet went on, with full notice. All that can be said is they and Richardson must abide by the results of their action. It is surprising to us that a second mortgagee with full notice can under such circumstances for one moment claim that he has any equities in an attempt, without the expenditure of a cent to put himself in the position of a prior en-

cumbrancer. Counsel would lead one, who reads his brief, to think it an easy and equitable thing to do. He complains that Traver failed "to arrest the course of Hyde's transac- "tions, or to sound any note of warning which might be "heard," etc. Where is there any evidence to show that Henry J. Traver was Hyde's keeper? What power did he have over Hyde? Where is there any evidence to show that Henry J. Traver had any notice, or suspicion, of what Hammond, Bogue or Hyde were about? The record is barren of any such evidence. And no honest man, in Henry J. Traver's place, would have suspected or dreamed of what they were doing. The burglar might as well complain of the absent owner of the plundered house, that "he did not exert reasonable vigilance for the pro- "tection of others, as well as himself, and sound some "note of warning" of what his comrade and self were doing, as for Hammond, Bogue or Richardson to complain, in this matter, of Henry J. Traver. These complaints and charges of fraudulent combination against Henry J. Traver are forced, and without foundation, evidently thrown in to break the force of the well founded charges against Hammond & Bogue. Where is the evidence connecting Henry J. Traver with the transaction of Hyde, pledging his equity of redemption in block 2 to Richardson, to secure the money loaned by the latter? What had Henry J. Traver to do with that transaction? Did he ever authorize Hyde to make such a loan? Did he *know* that Hyde promised Bogue that Richardson should have a first lien on block 2 for this money loaned? How, "*in the name of common sense*," could Hyde, under the circumstances, by *such a promise*, barter away any of Henry J. Traver's rights in block 2, and transfer block 1 to Richardson?

Hyde originated and mapped out this loan without the agency or knowledge of Henry J. Traver. The fact is, these charges are groundless, and too frivolous to discuss. Yet counsel (on page 53 of his brief) very complacently says: "He (Richardson) had a right, as against "both Hyde and Traver, to the security he contracted for, "and failing to receive it, his equity remained." It could not have remained as against Henry J. Traver, as he has failed to establish any *privity* of contract between him and Richardson.

Counsel, then, appears to have abandoned his old theory of subrogation, by payment of the last two Dickson notes, and upon the same page of his brief, says: "His equity of subrogation, as against the mortgagors, "*was not created by the payment of what then remained* "*due to Dickson*, nor could it be defeated by such pay- "ment with the money of either Hyde or Traver, unless "such payment had been effective to make good his for- "mer security, as a first lien on all of block 2."

Thus, he places his whole right to be subrogated to the ownership of those notes, and to foreclose on block 1, upon the *agreement* of Hyde with Bogue that he would pay off the Dickson encumbrance.

By express agreement, Hyde became the *agent* of Richardson to pay off the Dickson notes. As we have previously said, he alone was *trusted* by Richardson for this purpose. The name of Henry J. Traver was not mentioned. And counsel, driven to desperation, when discovering the inequity of being subrogated by "ex- "change of securities," without the expenditure of a single penny, endeavors to force the relation of principal and agent between Henry J. Traver and Hyde, and thus to stand upon this new theory. We have discussed this

alleged agency of Hyde in another part of this brief, and shown that in making said promise he acted for himself, independently of Henry J. Traver, and without any authority from him, either directly or indirectly, to bind him in the transaction.

There are references in counsel's brief to other transactions which he *assumes* or *supposes* fraudulent, such as the consideration of the deed to Earl, which are too remote to be discussed, and form no part of the matters in controversy. But these transactions are denounced by counsel as fraudulent, without a particle of evidence in the record showing any fraudulent intent on the part of Henry J. Traver, and are paraded as equities in favor of Richardson.

We deem it useless to tax the patience of the court with the discussion of points so irrelevant. We fear we have already wearied your Honors with the length of our argument. The complicated state of the facts in the case is our apology.

We are confident that when your Honors examine the facts in detail it will appear that the appellant has no standing in a court of equity, and that there will be a "clearly discerned superior equity" in favor of the appellee, and that the decree of the Circuit court will be affirmed.

McCoy, Pope & McCoy,

A. McCoy &c. *Counsel for Appellee.*